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MEMORIES OF A HALF CENTURY AT THE NEW JERSEY BAR

MEMORIES
of a
HALF CENTURY
at the
NEW JERSEY BAR

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by

ROBERT H. McCARTER, LL. D.

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THE NEW JERSEY STATE BAR ASSOCIATION

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This book is affectionately dedicated
to the Bar of New Jersey,
past and present.

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Prefatory Statement

A word as to the origin of this memoir. During the early winter of 1936, I was invited to meet some friends at luncheon. I accepted the invitation without the slightest suspicion that the occasion was anything more than a pleasant gathering. I was told, however, after we were seated at the table, that those present—about six in number—were a committee of the New Jersey State Bar Association who felt, with many other members, that some effort should be made to acquaint the Bar of the State, particularly its junior members, with some of the Bench and Bar of former days, and thereby ascertain what a proud record we have, and what character and learning they possessed. That it was also felt that my long practice had qualified me to enlighten them from my own experience, and they, therefore, hoped that I would write down my impressions of them. After a few days' reflection, I accepted the invitation—hence this book. Nothing but the evident sincerity of the request would have prompted me to think any experience of mine was of sufficient importance to be put in book form.

I have greatly enjoyed the work, and on review am really amazed at the constant recurrence of amusing incidents; so that I am not surprised that I have had lots of fun during this half century of pretty arduous work. I scoff at the idea that the practice of law is dull, or that the law itself is dry as dust.

It may be, as many assert, that the times have changed; that a profession has degenerated into a trade, and that neither the lawyers nor the judges of the present time, are to be compared with those of whom I speak in this book. I do not want to acquiesce in this idea; but whether it be true or not, "the past at least is secure"; and thank goodness, I have enough of the old spark left to be able to appreciate the ideals and doings of these worthies.

ROBERT H. MCCARTER

November, 1937.

MEMORIES OF A HALF CENTURY AT THE NEW JERSEY BAR

The Student Period and Early Days

A short reference to the Student-at-Law period between June 1879, when graduation from Princeton took place, and June 1882, when admission to the Bar of New Jersey as an Attorney, ensued. Those were simple days. Few went to the law schools, of which there were then not many in this country; and the "clerkship" in a New Jersey law office was largely devoted to copying papers in longhand. The typewriting machine was hardly invented, and not generally used. I remember, during my student period, being one of a considerable crowd of spectators standing in front of the office of the Prudential Insurance Company (then in its infancy) and watching a young clerk manipulate a typewriter, with as much curiosity and interest as we all manifested later in seeing the early aeroplanes. I was registered in the office of *McCarter & Keen*, a well-known firm in Newark. There were perhaps half a dozen students, most of whom did not take their work very seriously. Among them was William O'Gorman, the son of a prominent physician then in active practice in Newark. His father, very wisely, did not furnish him with much pocket money, and when Billy would get "hard up" he would disappear from all his usual haunts for a fortnight, and then reappear with a replenished pocketbook, the proceeds of sale of a dime novel he had written in the meantime. Students in those days were expected to pay for

the privilege of studying in a good law office. During the second year of my clerkship, I attended the afternoon sessions in the Law School of Columbia College in New York, and had the privilege of sitting under THEODORE W. DWIGHT, the finest teacher I ever had. In going to and returning from this school I became well acquainted with two students in other well-known offices, who became warm friends of mine and we three organized a moot court, one periodically acting as judge, and the other two as counsel for the plaintiff and defendant respectively. The Judge would make up a syllabus containing a statement of the question, the counsel would prepare the pleadings, and then on Friday evenings we would meet in some office and argue our sides of the question. We became very much interested, and at length were flattered by the request of a well-known lawyer—Edward A. Day—to join our court and participate in our proceedings, which he did do for over a year.

I remember one very stormy day when my two Newark friends—Howard W. Hayes, a graduate of Yale, and Richard F. Conover, the valedictorian of the Class of '80 at Princeton, journeyed with me over to Great Jones Street in New York City, where the Law School was then located. Professor John F. Dillon, the author of the great work on Municipal Corporations, arrived a little late, his beard covered with snow, and found no one present of the hundred or more students, save my two friends and myself. He smiled pleasantly at us, and delighted us, as he wiped his spectacles with his handkerchief, by saying, "Gentlemen, I observe that the Old Guard is present."

One of the most serious and able of the students in

the office was John R. Hardin, also of the Class of '80 at Princeton. He and I spent weeks copying bills of exceptions, which contained a transcript of the testimony given at a trial that had lasted at least a fortnight. Somehow, we did not mind the drudgery.

All pleadings prepared in the office had also to be copied, and we became in that way quite familiar with the several forms in common use. I remember the case of *Pope v. Skinkle,* which is reported in one of the early volumes of Vroom. Of course, in those days the strictest adherence to the rules of common law pleading was required. The plaintiff in that case complained that the defendant had moved from his (the plaintiff's) property, and appropriated to his own use, a barn of great value, and he sued for the value of the barn. He brought an action in trover, alleging in his declaration that he, the plaintiff, "had casually lost from his messuage a barn, which the defendant had casually found and appropriated to his own use."

A great point was made of costs in those days, and our preceptors were experts in drawing up bills of costs, and all lawyers were avaricious in collecting them. There was a successful lawyer by the name of Cobb, who was in this regard particularly zealous, and it was said of him, that in his daily devotions, he amended the Lord's Prayer by saying, "Give us this day our daily bread, with costs!"

The Prosecutor of the Pleas of Essex County was then Gustavus N. Abeel, a man of great ability and blessed with a keen sense of humor. We students delighted in attending the sessions of court when Abeel represented the State. The owners of a factory on the Passaic River, which was then the source of the water

supply of both Newark and Jersey City, were indicted for polluting the water of the river, by pouring refuse containing carbolic acid into it. The counsel for the defendant conceived the idea that the river was already dreadfully polluted, and that the acid which his client poured into it really acted as a disinfectant, and thus instead of its being a nuisance it was in fact a benefit. To prove his case, he showed, by a bridge tender, that dead cats and dogs, and on one occasion, the body of a negro, floated down the River, and to add to the story, he remarked (concerning the negro), "Oh, how he smelt!" Abeel mildly interrupting, asked, "Was he dead?"

It was not until the end of our three years of clerkship that the examinations for admission to the Bar included a series of printed questions. Prior to that time one branch of the Supreme Court at each of its terms would sit after lunch, to hear the students examined orally by one or more examiners appointed by the Court. Very few failed to pass, the judges making their determinations at once. It so happened that a reform was instituted at June Term of 1882, and a series of questions was prepared by the examiners, printed and laid before the students for their answers, and if they jumped that hurdle, they were then taken before the Court and subjected to the oral examination. They knew at once whether they had passed or not, and did not, as at present, have to wait months to learn their fate.

Our class approached the ordeal of this new system with trepidation. Of course, there was no file of old questions, nor even a reliable tradition of what was likely to be asked. Among the thirty odd who presented

themselves were Francis J. Swayze, who had served his clerkship at Newton, in Sussex County, and Mahlon Pitney, who studied with his father Henry C. Pitney at Morristown. Both of these lads became distinguished members of our Supreme Court, and Pitney went to the Supreme Court of the United States.

Pitney's father, pretending to be afraid that his son would fail, fluttered around the State House until he secured a copy of the paper containing the printed questions, and after glancing at it, and thinking that it was very difficult, rushed into the main branch of the Supreme Court as it was hearing a case in the old Court of Errors Room in the State House, interrupted the argument, his hand that held the examination paper trembling, and shouted, "It's a damned shame to give mere boys such questions as these!" Chief Justice Beasley laughed him out of the room, and Mahlon passed a perfect examination.

There were, of course, no telephones, and one duty of students was to run errands. To save the drudgery of copying papers in longhand, the shorter ones were press-copied. All papers, no matter how bulky, were folded, as they still are in the office of the Clerk in Chancery, and were frequently bulky and difficult to handle.

At the time of my admission to the Bar the official reports included only thirty-five volumes of Equity Reports and forty-four volumes of Law Reports. The West System (including the Atlantic and the Federal Reporter) had not yet been started. The first Digest of our Reports was published in 1876, being ably prepared by Judge Stewart, Common Pleas Judge of Mercer County, and consisted of two volumes. A supple-

ment of one volume was later prepared by my genial friend Albert C. Wall, Esquire. Judge Bennington F. Randolph, the father-in-law of Ex-Governor Bedle, appreciating the need of a digest, had, he said, for years been preparing one. So long a time elapsed in its preparation, that some wag remarked Mr. Randolph would "die jest" before he finished it. It was never published.

The Federal Courts

We had in New Jersey but one Federal Judge, Nixon, who lived and held Court in Trenton. The Circuit Court of Appeals had not yet been established, but there was a Circuit Judge in those days—Judge McKennan—who lived in Central Pennsylvania, and who, I thought, looked like Mr. Pickwick. He would review the work of the District Judge, and there was a full appeal in all cases having the required pecuniary amount involved, to the Supreme Court of the United States.

Judge McKennan would generally attend at Trenton at the two trial terms each year; and at least once a year Justice Bradley of the Supreme Court of the United States would preside at jury trials. It was his practice, like most if not all of his associates, to ride the circuit, and attend at least once a year in all the districts of the Third Circuit. He was a very remarkable man. He was a classmate at Rutgers College of Mr. Cortlandt Parker and Mr. F. T. Frelinghuysen, and shared first honors with them. Before his elevation to the Supreme Court by President Grant, he practiced in Newark, and led the Bar of the State. He was a fine mathematician and a thinker and writer on philosophical and theological subjects. One of the last cases he tried at Newark was a homicide case of such importance that Attorney General Vanatta of Morristown assisted the Prosecutor of the Pleas of Essex County, and Mr.

Bradley had Mr. Cortlandt Parker to help him defend the accused. It was one of the earliest criminal trials conducted by Judge Depue, and he had his hands full with that array of counsel. The case excited the greatest interest, and the court-room was crowded, particularly at the summing up, with many prominent Newarkers. Mr. Bradley made a magnificent address to the jury, but to the amazement of everyone, in the midst of an affecting sentence, he suddenly stopped, his face reddened and after a moment's pause he sat down. The Attorney General followed, and after about fifteen minutes, he made use of an expression, in which an unusual word was used. Thereupon Mr. Bradley jumped to his feet and blurted out, "That is the damned word *I* wanted!" The youthful Depue did not discipline the leader of the Bar.

Shortly after my admission to the Bar, I was permitted to assist my father in a motion, in the United States District Court, of such importance that Mr. Justice Bradley came on from Washington to hear it. He sat in the Chancery Chambers in Newark, then located on the ground floor of the Liverpool and London and Globe Insurance Company's Building, on the corner of Broad and Mechanic Streets. When I was presented to him before the argument was begun, he smiled, saying "The first case I ever tried was before Judge Robert H. McCarter [my grandfather] in Sussex." Involved in the case was a question arising under our Attachment Act. Of course, the judge had not the slightest idea of the nature of the controversy until the case was opened. He interrupted counsel by recalling from memory, the dates of the original passage of, and the several amendments to, the Act, and the details of

the several enactments. The arguments were concluded about twelve o'clock, Saturday, and he requested that the voluminous record and briefs be sent to the residence of his son, William H. Bradley, Esq., in Newark. On Monday morning at ten o'clock he delivered a long oral opinion, disposing of the intricate questions involved. His son afterwards told me that his father had not looked at the papers.

Judge Nixon, who, I always thought, was an excellent judge, became ill shortly after I began to practice, and Judge Leonard E. Wales of Delaware used to come up to fill his place. The practice in Delaware, where he had been brought up, differed materially from our own, and poor Judge Wales used to struggle with the problems he had to solve. He presided at the first trial of a somewhat famous case, *Hodge v. Lehigh Valley Railroad Company*. Richard V. Lindabury, just entering upon his successful career, represented Hodge, who sued the railroad company for damages he claimed his lands had suffered from a slag bank the railroad had constructed on its own land, to protect its tracks from the floods of the Raritan River. There was much evidence by expert hydraulic engineers, on both sides, as well as by numberless lay witnesses. After two weeks had been consumed in the taking of the testimony, and both counsel had summed up, the case was adjourned until the next morning, when it was expected the charge would take place. To the astonishment of everybody, Judge Wales, instead of proceeding to deliver his charge, announced it had overnight occurred to him that he was a stockholder of the railroad company (to the extent, I believe, of ten shares) and consequently he felt disqualified to proceed with

the case, and that he would ask Judge McKennan, the Circuit Judge—who knew of course nothing whatever about it—to come to Trenton from Philadelphia, and charge the jury! Counsel on both sides agreed to waive the alleged, but tardily discovered, disqualification of the judge, but he was adamant; and so he continued the trial until Judge McKennan could be had. The latter judge in a day or two appeared, and delivered a charge, which naturally was more or less colorless, as he had not heard a word of the testimony.

Although I am anticipating, I will here recount a later incident that occurred in the second trial of the same case, after the Apellate Court had reversed the verdict against the railroad company which the jury charged by Judge McKennan had rendered. A year or more had elapsed, during which the health of my father had become impaired, and he was not able to conduct the second trial. The Company requested me to assist former Chancellor Williamson, and James J. Bergen in trying the case for the defendant. A warm friendship between Bergen and myself grew out of that case, and lasted until his untimely death. In due course, I called on Chancellor Williamson at his residence in Elizabeth (where the Post Office now is). He was then over seventy years of age, which at that time seemed very old to me, and I approached the subject of the trial with trepidation. I shall never forget the cordial way he greeted me, nor his remark, "Robert, you prepare the case for trial and examine the witnesses. I'll be there." I did not see or hear from him again until the day the second trial started. Lindabury had his war paint on, and the trial started before Judge Edward T. Green, son-in-law of Chief Justice Beasley,

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and an excellent lawyer. He had succeeded Judge Nixon, who had died. The pleadings were the same as at the first trial, and no one had suggested any defect in the declaration. I cross-examined the plaintiff's witnesses, without a suggestion being made by Mr. Williamson, who sat there with his eyes shut, and apparently asleep. Four days had been consumed in this manner, and the plaintiff had rested his case, when our "sleepy" associate, without saying a word to either Bergen or me, arose, bowed deferentially to the Judge, and in his most plaintive voice said,

> "If your Honor please, the evidence adduced by the plaintiff [which was to all intents the same as at the previous trial] has demonstrated that a most serious defect exists in the declaration in this case. The complaint is grounded on an injury to the possessory estate of the plaintiff, whereas it appears [as it always had appeared] that he is in fact suing as a reversioner. I need hardly direct your Honor's attention to Tidd's Practice and Chitty on Pleading without more particular reference, both of which masters of common law pleading assert that such a situation is all wrong, and I therefore am compelled [as if sorrowfully] to move for a non-suit."

Both Mr. Bergen and I, who were quite surprised at the motion, tried to look wisely acquiescent, and Judge Green, addressing counsel for the plaintiff said, "Mr. Lindabury, this seems to me a very serious matter, and I am greatly impressed with the able argument of Chancellor Williamson. What have you to say?" Lindabury pooh-poohed the matter, calling attention to the history of the case, that none of the counsel or judges

previously concerned with the litigation had suggested any trouble on that score; that the Chancellor was relying on obsolete principles and authorities, and that in this modern day so technical a point would not prevail, and should not at this late day in the history of the case, be allowed to be raised. Judge Green did not agree with Mr. Lindabury, whereupon the latter, to save himself from a non-suit, asked leave to amend. The Court decided he would allow the amendment, and Lindabury suggested he would prepare the amendment overnight, and asked that the trial proceed; whereupon Chancellor Williamson again arose and said, "We are entitled to see the amendment", so the judge adjourned the case for an hour, to permit it to be drawn. When it was ready and presented to the Court, Chancellor Williamson said he would like an opportunity to read it "with his associates", and suggested a further recess of fifteen minutes, that counsel for the defendant might read it. This course was adopted. Lindabury handed me the amendment which he had hurriedly prepared, in his own handwriting, and we three retired to a small room, I carrying the amendment. The Chancellor carefully closed the door, and instantly, without any one of us having even glanced at the amendment, said smilingly, *"Boys, we'll demur."* After waiting for about five minutes, we returned to the courtroom without having perused the paper, and the Chancellor, in a most pathetic tone, said "Much as I regret the delay, my associates and I agree that a most serious question of law is raised by this amendment, and are united in the view that it is our duty at this point to interpose a demurrer to it, which we now do orally, to be followed within twenty-

four hours by a written demurrer in due form." After Judge Green had stated we were certainly entitled to pursue that course, the jury was discharged and the trial was over. I never, in all my after association with Mr. Lindabury, saw him so angry as he then was.

I don't believe any other lawyer in New Jersey could have put that one over on Judge Green, but Chancellor Williamson occupied at the time a unique position at the Bar. He was the son of Isaac H. Williamson, who had been Governor-Chancellor under the old constitution. With that inheritance he soon showed marked ability as a lawyer and became Chancellor of the State. After his retirement, he resumed practice and there was scarcely a case of any importance in which, while he practiced generally, he was not engaged. He participated in the organization of the Central Railroad of New Jersey, and continued to be its General Counsel until his death. Both Bar and Bench admired and feared his shrewdness and adroitness. He represented that company in many important cases, one of which concerned the title to what was known as the West Line Grant that extended to the valuable waterfront in Jersey City. The Lehigh Valley Railroad was also interested in that great suit, and my father had Robert Gilchrist, a distinguished lawyer of Jersey City, who had been Attorney General of New Jersey, associated with him against Chancellor Williamson. While still a student, I was sent to Mr. Gilchrist's office with a letter, and on entering his rooms, I found him sitting there with maps hung up on the walls, illustrative of the location. To my inquiry as to what he was doing, Mr. Gilchrist replied, "I am trying to anticipate what that damned Williamson will say!" This remark, by

the way, was a good lesson to me, for it is the mistake of many lawyers to fail to anticipate the moves of their adversaries, and to rely entirely upon their own tactics.

Chancellor Williamson had many ideas that we now would consider old fashioned and out of date. Before we were required to serve our briefs in the Court of Errors, I have seen him, toward the end of the day on Friday, coquette with the Court and occupy the time before the hour of adjournment, so he would not have to hand his brief to his adversary, who would have had Saturday and Sunday to study it. He was a shrewd and judicious cross-examiner, and had a vast experience in defending tort actions brought against the New Jersey Central Railroad. As he advanced in years, the late Robert W. DeForrest of New York, who had married a daughter of a high official of the Central Railroad, although he was by training a New York lawyer, was employed to defend many of the cases, and was so engaged one day in the Hudson Circuit. The Chancellor was sitting there, his well known brief bag, into which no one, as far as I knew, ever saw him look, lay on the table. Mr. DeForrest was cross-examining the plaintiff. The Chancellor arose, took his bag and his hat, and went out of the room, remarking quite audibly, "I must go, I must go—and I may say, when I was a young man, it was not customary for the defendant's counsel, by cross examination, to make out a case for the plaintiff!" How similar was this incident to one described by Lord Birkenhead, where in a short article on the Earl of Halsbury he says: "I remember an occasion when he attended a meeting of the Shadow Cabinet to consider certain proposals put forward by Lord Lansdowne for the reform of the House of Lords. He

listened closely for two hours (as he often did) without saying one word, and at last rose with the observation: 'I must leave now—but before I go I desire to make it plain that I disagree with every suggestion that has been made!' "

Judge Rellstab

John Rellstab, Judge of the United States District Court for the District of New Jersey, had really a very remarkable career. He started life as an operative in, I think, one of the potteries in Trenton. It was a well known fact that the man who ran the elevator in the Federal Building at Trenton during the incumbency of Judge Rellstab had been a bench-mate of his when they were both working in the same factory. After his admission to the Bar, Rellstab became Judge of the City District Court at Trenton, and later a Judge of the Court of Common Pleas of Mercer County, and when the vacancy was created in the U. S. District Court by the promotion of Judge Lanning to the Circuit Court of Appeals, Rellstab was appointed to fill it, and he performed the duties of that office with great distinction and satisfaction. The law business of the District had increased enormously, owing to the fact that so many corporations were then organized and existing under the New Jersey law. While the business has probably since grown somewhat, it is fair to say that Judge Rellstab alone, for many years, did the work that the four judges of that Court now perform. I remember that very shortly after his appointment, I was—against my wishes, because of my entire ignorance of patent law—employed to make a motion in a patent case involving, I think, the then novel invention

of the self-starter in an automobile. We appeared before the Judge, whom I knew slightly, and he inquired what the suit was about. Upon being told, he said, "Now, gentlemen, I want you to be very plain, for I know nothing about the law of patents." In the presence of my associate, and of my client, I, perhaps foolishly, replied, "Well, Judge, if you know less than I do, Heaven help you!" It is perhaps fair to say that I won the motion.

One of the most important and protracted suits I ever was engaged in was presided over by Judge Rellstab. It was a suit for triple damages under the Sherman Act, against E. I. duPont de Nemours Company. It was tried in Trenton before a specially selected jury, and lasted at least three months, resulting in a verdict for the defendant. With me were Frank S. Katzenbach, later a Justice of our Supreme Court; George S. Graham, since deceased, but then a member of Congress and Chairman of the Judiciary Committee of the House; and William H. Button, of New York, representing the defendant. It would indeed have been remarkable if, during this long trial, some error had not crept into the record, but although the case was reviewed, the judgment was affirmed, and I always felt that Judge Rellstab had reason to be proud of the care and skill with which he conducted that protracted trial.

I recall something that occurred during this protracted trial that amused both Judge Rellstab and myself. In the division of labor among the several counsel for the defense, the duty of opening the case for the defense fell upon my shoulders. The plaintiff was claiming he had been damaged by the constant successful efforts of the defendant to drive him out of a

competing business, which largely consisted of the manufacture of explosives for use in mining. In my argument, I undertook to show the dangerous nature of the commodity, and dwelt at some length upon the fact that a business of this character had been successfully carried on by the DuPont family for over a century, and called attention to the fact that such a businessness—"handed down from bleeding sire to son" —would naturally receive more patronage from customers than an unknown competitor would enjoy. Next day, when I was handed a stenographic report of my opening, I observed that the stenographer had reported me as having rendered the famous quotation thus: "handed down from *breeding sire to son.*"

I formed a warm friendship with the Judge during those three months, and frequently thereafter had the pleasure of entertaining him in the country, and endeavoring to beat him at golf, which I never succeeded in doing. He was a serious-minded judge, and very religious. I remember that the Essex County Lawyer's Club, as it was then called, had one of its annual dinners in Newark on a certain Saturday evening. I was the titular guest of honor at this affair, and, I suppose because of my warm friendship for the Judge, he was invited to attend the dinner as a guest. His letter of regret rather amused some of the less serious-minded who were present, because of his excuse for not coming, namely, that he had to prepare his Sunday School lesson for the next day.

One of the most interesting experiences I ever passed through was before him, on a very hot day. I took off my coat, and presented *ex parte* an application for a preliminary order authorizing the Public Service Cor-

poration to increase its fares on street cars from five to six cents a ride. I consumed about two and one-half hours in making my motion, the bill being designed to have a statutory court ultimately fix the fare, but my insistence was that the emergency justified the giving of a temporary increase of at least a cent over the then existing rate fixed by the Utility Commission. I felt, from the manner of the Judge, that he was with me, although he had not as yet so indicated by word of mouth. It was about lunch time, and he said he would adjourn for lunch, and at two o'clock he would have his automobile drive him and me out to see Circuit Judge Davis, as he thought the case was of sufficient importance at least to consult with him before he finally acted. I did not relish having another two and one-half hours with Judge Davis; but we went out to his house near Lawrenceville, and Judge Davis, evidently believing as I did, that his turn would come on the hearing before the statutory court, declined to do more than tell Judge Rellstab that if the application had been made to him for the temporary increase, he would not have granted it. Judge Rellstab seemed to me to wobble a little. I began to be worried. Finally, a table and pen and ink were brought out on the front porch of Judge Davis' house, and I, in manuscript, prepared an order providing for the statutory court, and inserting the provision for a temporary increase, which I so much desired, and Judge Rellstab, with some hesitation, signed the order. Coming back in his car he said to me, "You thought I was not going to sign that order, didn't you?" I replied, "Judge, you had me pretty well frightened." The order was signed and the newspapers were full of the matter. The next

morning, I found on my desk at Newark, a letter from Judge Rellstab saying that reflection over night had convinced him that he went too far in granting the temporary increase, and that he would eradicate that portion from the order which had been filed. The statutory court consisting of Judges Woolley, Davis and Rellstab later sat and directed an increase of fare, with the giving of tokens, should it finally be decreed that the fare was wrong. That day with Judge Rellstab was a memorable one to me.

When I recall the enormous amount of business that was dispensed by Judge Rellstab—cases at common law, in equity, including patents, and in admiralty—I marvel at his success. I remember chatting with him one day on the train and being told that the height of bliss to him was to render a decision in an important case as he believed it should be made; to have it reversed by the Circuit Court of Appeals, and then to have the Supreme Court on *certiorari* affirm his original view.

The final authoritative attack upon the constitutionality of the Eighteenth Amendment was made in the District of New Jersey, and argued by the late Elihu Root, William D. Guthrie and the then Attorney General of New Jersey, Mr. Thos. F. McCran. Judge Rellstab, in an elaborate opinion, sustained the amendment, and his action was affirmed by the Supreme Court of the United States, although no formal opinion was filed in the case. I remember being told by one of the young men in the office of the Attorney General of New Jersey that he and Mr. McCran had spent six weeks or more in New York in a law library, developing a point which they deemed of the greatest importance, and really decisive against the propriety of the

amendment. When the case reached the Supreme Court of the United States, the Attorney General of Rhode Island joined the force of lawyers seeking to upset the amendment. I asked Mr. Guthrie, after the argument, how he felt about the case, and as illustrative of his view concerning the importance of the argument by counsel for the State of New Jersey, he said that Mr. Root and he, Guthrie, were hampered by the fact that they had to share some of their time with the Attorneys General of New Jersey and Rhode Island. I did not pursue the subject further and seek to learn what he and Mr. Root thought of the "decisive point" to which the young man from Trenton had alluded.

Our State Courts

Turning to our State Courts, the Supreme Court when I came to the Bar consisted of Chief Justice Mercer Beasley, with Justices Van Syckel, Depue, Knapp, Dixon, Reed, Scudder, Magie and Joel Parker, a very strong aggregation which I venture to believe has never been excelled. Each wrote elaborate opinions in the Court of Errors and Appeals. Each presided at the Circuit, and at least three times a year they tried all the civil *nisi prius* cases, yet they found time withal to perform their many duties in the Supreme Court, including the writing under their own names of very elaborate and often learned opinions in that Court. Of course, the enormous subsequent growth of litigation now requires the Supreme Court Justices to content themselves with *per curiam* opinions, and in reading these opinions, I am often reminded of a remark by Professor Theodore W. Dwight, of the Columbia College School of Law to the effect that one test of the weight and authority of any decision is whether the writer has assumed responsibility for it by placing his name at its head.

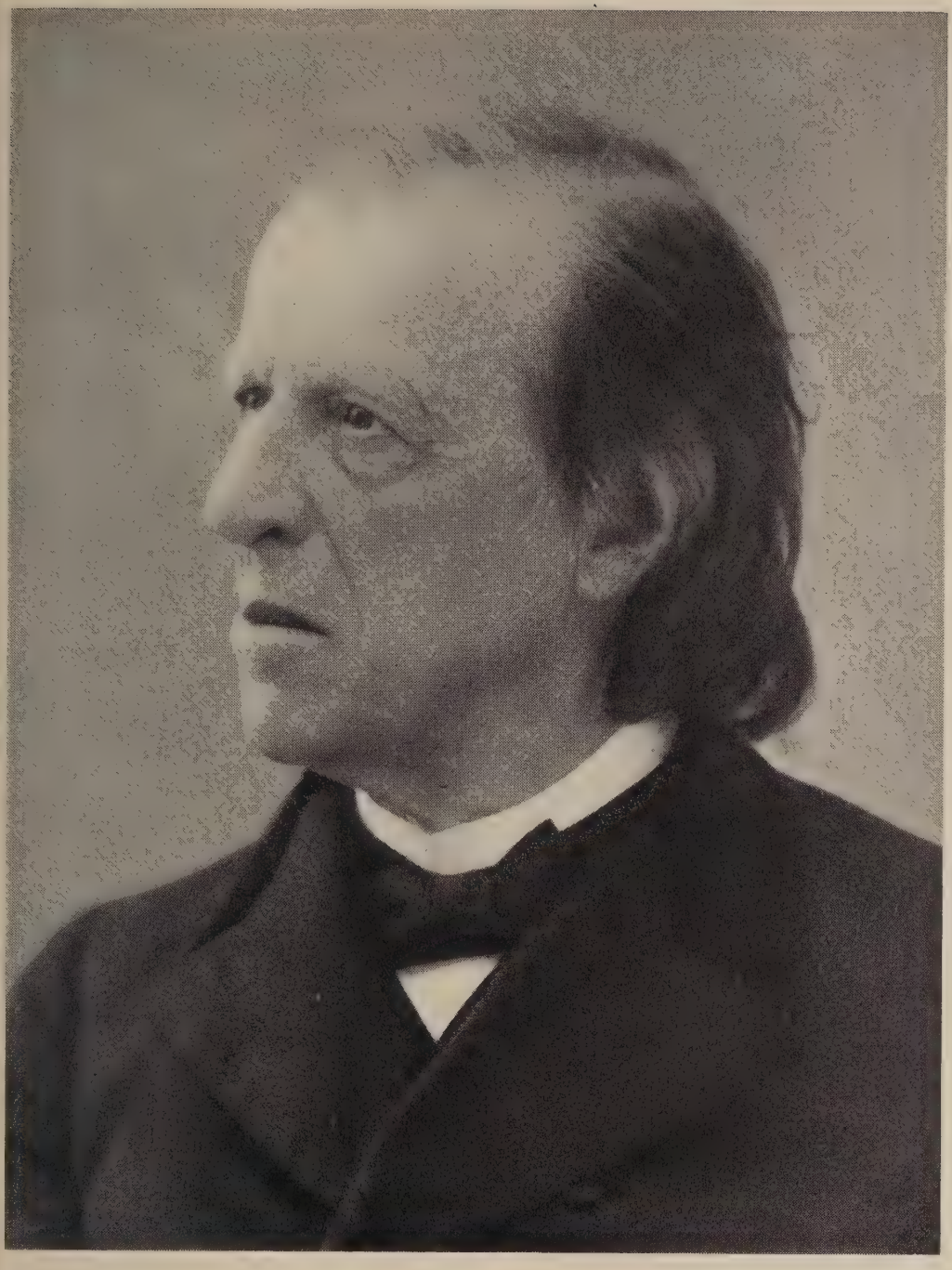
I personally knew each member of the Court as then constituted very well, except Justice Joel Parker, with whom I had only a slight acquaintance. My father was an intimate friend of each, and they all received me with a cordiality and an apparent interest in my argu-

ments that I can never forget. I recall on one occasion when Justices Van Syckel, Depue, and Dixon lunched with our family at Sea Bright, I took them and my father sailing in my catboat on the Shrewsbury River, and all hands got thoroughly soaked. Thus (I being then only a student) a personal relation began between them and me which I cherish to this day.

Let me discuss some of these men, and put down a few of the early impressions they made upon me.

Chief Justice Mercer Beasley

Beasley was easily Chief Justice. He dominated the Court so far as such men as were his associates could be dominated. He was forty-eight years of age when he succeeded Chief Justice Whelpley. His name appears as counsel in several important cases that were presented during the comparatively few years he was at the Bar, and from the moment he went on the Bench, he impressed himself upon all as imbued with the principles of the law. His opinions parade few authorities, but, in a style that was unique, he fairly squelched the opposite view by the logic of his argument; so much so that I am unable to say who felt the more sheepish, the counsel who ventured to appeal from his judgments, or the Judges who were to decide the appeal. I would not characterize him as a good listener. As the case developed, he would become interested in a phase of it, and turning his back upon counsel, he would read some authority for which he had sent, or engage in a serious discussion with one of his associates. I remember that the late Craig A. Marsh of Plainfield was presenting a case to the Court, and smarting a little under the apparent want of attention of the Chief Jus-



Mercer Beasley

tice, he paused for a moment, and then said, "We now come to a point that will interest even the Chief Justice!" He had two sons, Mercer Jr., who was Prosecutor of Mercer County; and Chauncey, who practiced privately for a number of years. Vice Chancellor Van Fleet was a great admirer of the Chief Justice. I remember him saying to me, with a twinkle in his eye: "The old man had the nerve to say to me 'Brommy' (for so the Vice Chancellor was affectionately called by his friends) 'you have no idea how much I was gratified when I left the Monmouth Circuit, where Chauncey was in almost every case, and went to the Warren Circuit, to find he was in every case up there!' "

Chief Justice Beasley's opinions are landmarks. They stand out as expressions of the principles and philosophy of the law. They should be studied by every lawyer, old or young, as they have contributed materially to the makeup of American Jurisprudence, and are largely responsible for the great reputation the Courts of New Jersey have enjoyed. One case especially is implanted on my mind: *State v. Rogers,* 56 N.J. Law 480.

Here a controversy arose, purely political in character, between the Democratic and the Republican parties, touching the organization in the year 1894 of the State Senate of New Jersey. There were nine Democratic Senators who held over, and on the theory that the Senate of New Jersey was a continuous body, they convened and elected one of their number, Senator Adrain of Middlesex, as President, claiming the right when thus organized to pass upon the credentials of the eleven Republican members. The latter also organized and elected a President, Senator Rogers; and

the anomaly was thus presented of having two bodies sitting at the same time, one of whom was recognized by the Executive, Governor Werts, and the other by the House of Assembly. The case was considered of such importance that the nine members of the Supreme Court sat *en banc* to hear the arguments upon a *quo warranto* directed against Senator Adrain to determine by what right he was acting as President of the Senate. The report of the case contains 192 pages of argument, the counsel being, on the Democratic side, Richard V. Lindabury, Frederic W. Stevens, Attorney General Stockton and Allan L. McDermott. For the Republicans appeared Cortlandt Parker, Thomas N. McCarter, Samuel H. Grey, John W. Griggs, Gilbert Collins, Richard Wayne Parker and William M. Lanning (afterward Judge of the Circuit Court of Appeals for the Third Circuit). The conclusion to have the case argued before the full bench of the Supreme Court necessarily deprived the parties of an appeal, as there would not be a quorum left in the Court of Errors and Appeals. The greatest interest was manifested in the case, and on the day the decision was announced, the court-room was crowded, not only by lawyers but by politicians also, among whom were many people who looked to me like thugs, sitting on the window sills and jamming the court-room. Chief Justice Beasley delivered a most able opinion containing as fine reasoning as any I know of, over-ruling the claim of the Democrats. It was concurred in by all his associates, excepting Justice Abbett (who was generally considered to have inspired the idea that the State Senate was a continuing body). Judge Van Syckel, who sat by the Chief Justice while he was delivering his opinion, assisted him in

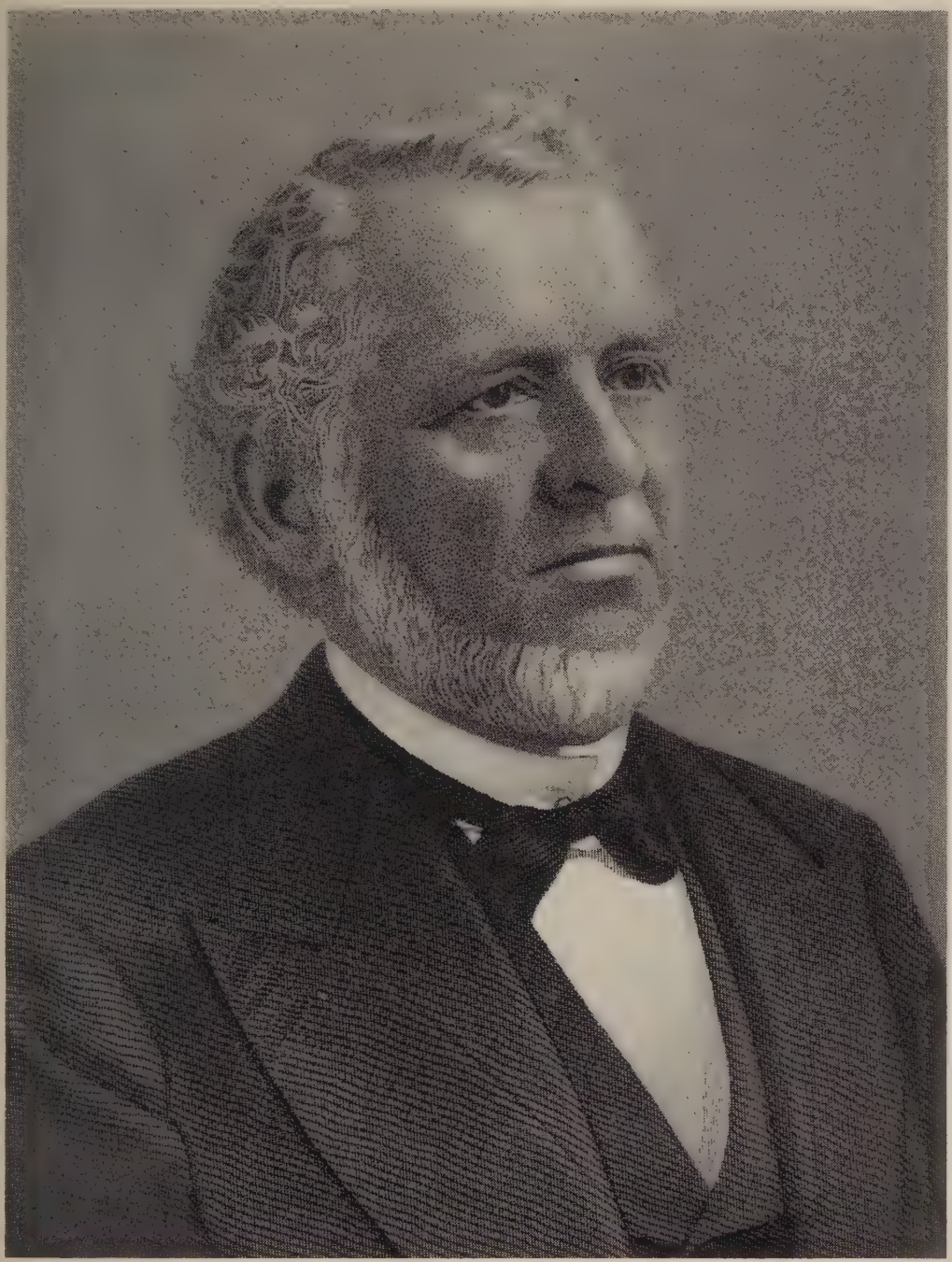
handling the manuscript; and the fact that besides the Chief Justice, of the eight concurring Judges, Justices Van Syckel, Reed, Garrison and Lippincott were Democrats, gives perhaps some idea of the high character of the Bench at that time, upon a question that was purely political. As I reread the opinion, I am inclined to the view that it displays Chief Justice Beasley at his high water mark.

Chief Justice David A. Depue

Next comes Judge Depue. A native of Warren County, he was graduated from Princeton with distinction in the Class of 1846, and studied law in Belvidere with John M. Sherrerd, whom he revered all his life, naming his only and distinguished son after him. He was appointed to the Supreme Court in 1866 and at once took charge of the Essex Circuit, moving from Belvidere to Newark, where he continued to reside in East Park Street until his death in 1902. He had a cottage at Monmouth Beach, near Sea Bright, immediately adjoining my father's, and I grew up under the eye of the Judge. He was a devoted husband and parent, and I can now see Mrs. Depue and him, every evening after supper, walking out in the gloaming together, enjoying their flowers, the sunset and each other. His character was very simple. He was cautious about his expenditures, being accustomed to hand over to Mrs. Depue his monthly check from the State, and she would dole out to him such small sums as his few personal wants would require. He was an indefatigable worker, and in the summer when almost everyone was enjoying a vacation, he would rig up a desk in the guest room of his cottage, and work hard all day, and

almost every day, on his opinions. He would wear slippers and an old dressing gown, and many a time, when sitting on our porch, less than fifty feet away, I have seen him come out on his porch and walk up and down, talking to himself and gesticulating with his right hand in which he carried his spectacles, and then almost run back to his desk to continue working. He was an inveterate smoker of what I am told were very bad cigars. He had the very highest ideals of judicial ethics, and while my father and he would frequently drive from Sea Bright to Long Branch to get a train for Trenton, while the Court of Errors was in session at the Summer Term, not a word was said by either concerning any case, although the Judge would frequently have an opinion in his pocket in a most important case, to be that day decided, in which my father was intensely interested. He was somewhat sentimental, and cherished his friendships with members of the Bar, particularly with "his boys" as he called them, of Essex County. I heard him declare once at a banquet that he had never once been deceived or misled by any of his boys, and that, too, although he would frequently sign orders without reading them, relying on their assurance the paper was all right. He had a large law library at his Newark home, where in the winter season he constantly worked. If one went there to see him on some business—which practice he never discouraged—upon hearing the door bell ring, he would not wait for the servant to answer it, but would walk down the long hall and open the door, giving a smile of welcome to the caller.

The floor of the library would be covered with open law books, and the table covered with blotched papers, which his inky hands had soiled. He took the greatest



David A. Depue

pains in the preparation of his opinions, and they are replete with the citation of authorities, both English and American. He fairly luxuriated in work of that character, so that each opinion is really an essay on the particular point of law he was considering. It would be difficult to imagine more opposite styles than his own and that of Chief Justice Beasley. Perhaps this habit of laying bare the abstract principle of law applicable to any given situation led him, particularly in charging a petit jury at the Circuit, to speak over the heads of the jury. I remember being before him in a case where an Italian contractor had signed a contract to build a railroad near Caldwell in Essex County, and had specified an absurdly low rate of compensation for excavation. There turned out to be a lot of rock, so that it was a ruinous agreement for the contractor, who was my client. I managed to work out a case of improper discharge by the railroad company, and relying on the Italian's rescission, tried to recover the reasonable value of the rock excavation, regardless of the contract rate. The defendant was represented by the late Edward M. Colie, who not only denied all liability, but filed an offset for high damages. Judge Depue, who seemed to take a great interest in the case, brushed aside my claim for a *quantum meruit*, holding that even if there had been an improper discharge and rescission, the contractor could not recover for the work he had done at a higher rate than the contract provided. The result was that in a charge which lasted over an hour, he practically told the jury that my man could not recover anything, and that as he had been overpaid, the defendant should recover on its offset. But all this was in technical and learned language. The jury withdrew,

and after some deliberation, returned a verdict for the plaintiff for $12,000. Judge Depue was on the Bench when this verdict was rendered, and on his own motion he set it aside, and discharged the jury for the Term. The Italian had a moment of bliss upon the rendition of the verdict, but after the Judge had disposed of it in short order he indignantly and audibly cried out: "The damna Judge wasa bought!" He could not understand.

After these many years, I never read an opinion of Judge Depue without the greatest admiration for it. There is not the slightest evidence of haste or slovenliness. The fountain head is sought in every case, and he is never satisfied with simply deciding a mooted point, without giving the historic or logical background. The contrast between his work and that of some of his successors is very great. He was not a vain man, or in any way spoiled by the professional eminence he enjoyed. Yet he did not affect any mock modesty. I recall one Saturday morning being in his Court room. Mr. Charles Borcherling was talking to the Judge, who was already on the Bench, and pretty soon the Judge called me up to the Bench and said, "Robert, what is your view? Mr. Borcherling and I were discussing the question as to which make the best lawyers, the city bred, or the country bred. I think the country bred do. Look at your father and me!"

Speaking of Mr. Borcherling, Major Carl Lentz told me of an amusing incident that occurred before Judge Depue, shortly after he began to preside at the Essex Circuit. Mr. Borcherling and Major Lentz (who cordially disliked each other) were on opposite sides of a case, and Mr. Borcherling, by cross examination, was

effectively and disastrously disposing of Lentz' client. Mr. Borcherling was seated at Counsel's table, with his foot on the rim of the table between Major Lentz and the witness. Borcherling was a very tall man, with large feet. Lentz, realizing that something must be done to save his client, in his broken English cried out, "Mr. Borcherling, von't you remoof your foot so I can zee der vitness?" Borcherling, very mad, arose and appealed to Judge Depue to protect him from the insult of Counsel. The Judge calmed him, but the thread of the cross examination was broken, and the case saved for the doughty Major.

Justice Bennet Van Syckel

Bennet Van Syckel was the third member of our Supreme Court at this time. After graduating from Princeton and pursuing his clerkship, he had opened an office in Flemington in Hunterdon County, where Vice Chancellors Bird and Van Fleet both started to practice. He was a man of very great ability, and soon after his appointment to the Court he became a recognized leader of it, and continued a member for thirty-five years. He had a peculiar style of composition, his opinions consisting of short paragraphs. They were a sort of compromise between a statement of the principle involved, with fewer citations of authorities than characterized the opinions of Chief Justice Beasley, and the countless authorities that Judge Depue's quoted. The three were close personal friends, and constituted a triumvirate in the Court of Appeals, sitting as long as I can remember in a row on the back tier of chairs in the old Court room.

I recall an amusing incident that I overheard while

before them. Some one was arguing a case. I was seated near enough to the Bench to overhear Judge Depue exclaim to Judge Van Syckel, "My God, look at Crandall!" and there, walking up to the Counsel's table, was gigantic John J. Crandall in his glory, carrying a dozen law books between his fingers and his shoulder on his outstretched left arm, from which he evidently proposed to read in an approaching argument. At that time there was no conference room behind the room in which arguments were heard, and Crandall, in two cases he had already argued at that term, had heard a conference called directly after he had completed his plea for the appellants, and of course suffered defeat in each of them without his adversary being called. He was nothing daunted by that, and with great noise, commenced his argument in the third. After he had read from each of his dozen books, and a conference was called in that case also, the several counsel huddled together in the small room at the front of the Court room. Most lawyers would have felt some chagrin at the situation, but not Crandall! He joined us there, remarking with some contempt in his voice, "The God damn fools don't know a God damn thing!", and in a moment with a sardonic smile he heard the Court dismiss his appeal in that case. I remember no lawyer quite like Crandall. He practiced in South Jersey and at one time had many cases. He had a sort of legal intuition. Everyone liked him, although he was a plain man, rough and outspoken. He had no awe of, or I was going to say, respect for, any judge, and never hesitated to say frankly whatever occurred to him as pertinent, however the remark might slap the Court. Withal he had some literary taste and published a book (a

Bennet Van Syckel

copy of which he sent me) called *Not Paul but Jesus.* His contemporaries and friends of the Bar all liked him, and I believe toward the end of his life many of them contributed to his support, after his business had largely left him.

Getting back to Judge Van Syckel, he voluntarily retired after a most remarkably successful career in the Supreme Court, underwent a severe operation at The Johns Hopkins Hospital, and resumed practice, appearing several times before the high Court of which he for so long a time was such a distinguished member. He told me late in his career of an amusing incident that occurred at the threshold of his practice. He had opened an office in Flemington, and was at that time the only educated lawyer in that town. He was given a retainer of $5.00 by some resident who had been sued before a local Justice of the Peace. He found in the Reports a precedent in point and he felt very confident of winning his first case. The plaintiff was represented by a successful pettifogger, and some of Van Syckel's friends warned him that the pettifogger had great influence with the Squire, and would defeat him. Van Syckel, relying upon his case in the Supreme Court, approached the trial with supreme confidence. The Court room was crowded with Van Syckel's friends—male and female—interested in seeing how he would make out with the smart pettifogger. The trial had not progressed very far when he fully realized his friends were right, and that his adversary owned the Squire. He determined that his only alternative was to irritate the pettifogger, and so successful was he in this, that the pettifogger, very mad, turned to him and said, "Look here:—you kiss my ——!" Van Syckel's reply was, "No, *I*

won't, but ask the Squire to do it; he has done everything else you wanted!"

Judge Van Syckel presided for years at the Union Circuit, where Richard V. Lindabury was manifesting his ability as a leader of the Circuit. He had his office in Elizabeth, and the Judge seemed to be hypnotized by him, although apparently quite unconscious of it. The other lawyers practicing at that Circuit felt it and did not hesitate to complain to their friends about it. Years afterwards, when Chancellor Magie failed of reappointment by Governor Fort, the Bar of the State united in a testimonial banquet to the Chancellor, at the old Waldorf in New York. In the course of some remarks I then made in recalling the situation in Union County, when Mr. Magie, who practiced at Elizabeth, left the Bar for the Bench, I said: "The firm of Van Syckel and Lindabury had not yet been organized." The large delegation of Union County lawyers, headed by Joseph W. Cross (afterwards a Federal District Judge) rose and waved their napkins wildly.

There can be no question that Judge Van Syckel was a great judge, and a tower of strength in our judicial system. He would in this day have been characterized as a conservative, but radical criticism was not so conspicuous then as now. He seemed to lead a somewhat isolated life. In his walks between his stone residence on Greenwood Avenue in Trenton and the State House, he seldom sought companionship, and impressed me as wrapped up in his work, his family and himself. I do not remember ever having seen him at any of the numerous Bar banquets that I have attended, and the late Frank Bergen called my attention, immediately after the Judge's funeral at his house, to the paucity of per-

sons present. Among those absent were the Judge's former associates on the Bench, several of whom were still in office. This reminds me that after the funeral of Richard V. Lindabury, then the unquestioned leader of the Bar of New Jersey, on a beautiful Saturday afternoon at his beloved farm near Bernardsville, his loyal partner, Frederic J. Faulks, said to me, "There was not a Judge of any Court, either of Essex County, or of any Court in this State, at the funeral."

I have already alluded to the fact that Judge Van Syckel resumed practice after his retirement. I was Attorney General of New Jersey at the time, and an important case was pending in our Supreme Court, involving the taxability of the Harsimus branch of the Pennsylvania Railroad at Jersey City. I retained Judge Van Syckel and John R. Hardin, who was then in active practice, to assist me. In conference we determined upon a division of labor in the preparation of the State's brief, as there were at least three big questions involved. When we had completed our work, I arranged for a conference at my home in Newark, during which we could read our several arguments, so that each question could receive the consideration of all three counsel. I met Judge Van Syckel at the railroad station, and we drove to my house, where Hardin had already arrived. The Judge had recently undergone the severe operation to which I have already alluded, and the only question I entertained was as to his physical strength to enter the contest. Instead of accepting my proffered assistance up the stairs in my house, he ran up like a school boy, and immediately commenced to read his memorandum, consuming over an hour, and after he had finished, he invited no discussion, and manifested

no further interest in the occasion, or in what Hardin or I had to say about our respective points!

Justice Jonathan Dixon

On the left of the Chief Justice, in the Court of Errors, sat Judge Dixon. He had grown up in New Brunswick, and was graduated from Rutgers College. He practiced law for a comparatively short time in Jersey City in partnership with Gilbert Collins, a relationship that cemented into a warm friendship between these unusually able men; so much so, that when both rose to the Bench, Dixon was thought to exercise a strong influence over Collins in the conclusions the latter reached.

Judge Dixon was short of stature, with a very slight cast in one of his eyes, but he had one of the most intellectual minds I ever encountered. He was an ideal listener, but I once heard him say that he did not remember ever having been swerved from his early view of a legal question by any argument of counsel. He had supreme confidence in the correctness of his own views, and if they differed from those of the majority, he would content himself with a short incisive dissent, apparently making little effort to proselytize. In that respect he differed greatly from Chief Justice Beasley, whom he much admired. It was said that the Chief, in case of a difference of opinion in the Court, would postpone the decision until he felt sure of a majority, and then call the roll. In the old days, a colored man had a lunch table in the corridor just outside the Court room, in the State House, and on one occasion, when the Court was evenly divided, the Chief Justice dilly-dallied until finally Judge John McGregor, a lay Judge,

came in from this lunch table, his mouth still filled with his last bite of food. The moment the Chief saw Judge McGregor he called out, "Judge McGregor, how do you vote?" The reply, so far as the food in his mouth permitted it to be understood was, "I vote to reverse!" and thereby the Chief Justice obtained the necessary majority vote for his own view.

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Dixon had great allegiance to precedent. There was a marked difference in view between the judges in a certain case, Dixon leading the minority, with a strong dissent. It was opinion day, and the very next case that followed for decision involved the same question that had almost bitterly divided the Court. When Judge Dixon's name was called, he contented himself with the simple announcement that, notwithstanding his personal views, expressed in the previous case, he was bound, after that decision, to follow the precedent, and so he voted with the majority. He wrote his opinions in longhand. They were consequently short and exact. They should he studied by students and lawyers alike.

Dixon shone at the Circuit. I was told by John W. Griggs, who tried many cases before him before he drifted into politics and ultimately became Attorney General of the United States, that he considered Judge Dixon a model trial judge. Notwithstanding Dixon's rather forbidding countenance, he had a dry sense of humor. The late William B. Gourley, a most excellent lawyer, at the close of a long trial walked up to the Bench with several sheets of legal cap which he handed to Judge Dixon. "What have you here, Gourley?" inquired the Judge. "Requests to Charge," replied the astute lawyer. "Oh, no," said the Judge, "you mean requests *not* to charge!"

I still recall with vividness an experience that I had before him at Paterson while still a very young lawyer. Our firm had a case on the calendar in Passaic County against the Lehigh Valley Railroad, a corporation of Pennsylvania, and I was entrusted with the duty of preparing papers for the removal of the case to the Federal Court at Trenton, which would postpone the trial for at least six months. In those days, one could transfer a case at any time before trial. The calendar was called, and when this case was reached, I boldly and confidently announced that I had a petition and bond for the removal of the case to the United States Court, there being the necessary diversity of citizenship. The Judge looked annoyed, and asked my surprised adversary what he had to say. He replied that he supposed my motion should prevail, but that it was hard on his client, who was a poor woman, to suffer the delay, and then have to go, with her witnesses, to Trenton to try her case. The Judge said he would take the papers and dispose of the matter next morning. At that time the Judge, after calling and disposing of the calendar, said he would now decide my motion, and to my consternation, for a highly technical reason (my bond was conditioned for filing at Trenton a copy of the "record"; whereas the language of the Act of Congress called for a copy of "the summons, complaint and other pleadings") he denied my motion, and told my adversary to proceed with the trial. Fortunately, he was as unprepared for this result as I was, and so the trial went off for twenty-four hours. I made a vigorous protest against the ruling, and defended my papers as well as I knew how, closing with the statement that I had followed the form in Bump's *Federal Procedure*. The

Judge looked down at me and in a very sarcastic tone said, *"It is better to follow the statute!"* The experience was of lasting benefit to me. To this day, I shun form books.

Judge Dixon became quite indignant once because the Courts in the State of New York refused to permit New Jersey lawyers to argue or try cases there *pro hac vice*, and so he prevailed upon our Courts to make and enforce a similar rule against New York lawyers. I happened to be one of counsel for the respondent in the well known case of *Hodge v. United States Steel Corporation*, which came on for argument in our Court of Errors and Appeals. Several very important questions were involved, which Francis Lynde Stetson, William D. Guthrie and other almost equally distinguished New York counsel had expected to argue. They were compelled to sit mute and to listen to the arguments of Richard V. Lindabury and Charles L. Corbin, then sharing the leadership of the New Jersey Bar. I could detect a nervousness and chagrin in the countenance of these New York lawyers, but we, on our side, were equally nervous and chagrined for a different reason. We knew our adversaries, and our feelings were justified by the decision of the Court of Errors, in an opinion by Justice Van Syckel, to which I never became reconciled, and from which I can now, I think, detect a tendency of our Courts to recede.

Chief Justice William J. Magie

Another very able and distinguished member of the Court at the time of which I write, was William J. Magie, first a Justice, then Chief Justice, of the Supreme Court and later Chancellor of New Jersey, a

series of honors that Chief Justice Green alone shared with him.

Magie, who was the son of one Presbyterian clergyman and brother of another, always manifested his Puritanic training. He was tall, possessed of a fine figure, and very handsome, a fact of which I think he was not unaware. It was said that he and his friend Justice Manning M. Knapp used to lunch together in New York on Saturdays, and then walk up and down Fifth Avenue not altogether oblivious of the admiring glances of the ladies they would encounter. But he was ordinarily very austere and I stood in great awe of him. When he was first appointed an Associate Justice, he was assigned to the Morris Circuit, then in the height of its glory. Jacob Vanatta, who had been Attorney General of the State; Henry C. Pitney, afterwards Vice Chancellor and the proud father of distinguished sons; Stephen H. Little and others, had grown somewhat out of hand under the rather weak manner in which Chief Justice Whelpley had conducted Court there. Judge Magie told me that as soon as he ascended the Bench at the old Court House in Morristown, he realized he would have to assert himself if he expected to control things. There was an informal meeting of the Bar to welcome him, and Stephen H. Little, a very mild mannered man, addressed him saying he and the other members of the Morris County Bar hoped that the new judge would be Judge, and not permit certain of the lawyers of that Circuit to continue to act before him as they had done under his predecessor; that the performance of one or two of the lawyers had been such as to result in the death of one of their associates; that two of their number, although neighbors and lifelong com-

petitors, did not speak to one another (referring to Messrs. Vanatta and Pitney), and that it was time that litigants in that County found out who governed the administration of justice there—a certain lawyer, or the Court! The Judge told me that he determined then and there to assert himself and put an end to all this bickering and bad feeling, and he never had any trouble, but always thereafter enjoyed the respect and affection of every Morris County lawyer, who united with the Bar of the State in the view that he was the best *nisi prius* judge in the State.

Justice Magie also presided in Somerset where he made warm friends among the citizens of the two counties, and gained great influence by the calm but firm way he performed his duties. I once heard him describe a situation that arose in Somerville when he presided in the sessions at the trial of a prominent politician who had been convicted of a serious crime. Two lay judges sat with him, one of whom favored the mere imposition of a fine, while the other, tentatively at least, shared with Judge Magie the view that the defendant, who was socially prominent, should be sent to prison. The defendant openly announced that if he was sentenced to prison, he would shoot himself in Court, and he was just the kind of a man to carry out his threat. The situation became very tense, but was relieved by the tardy determination of the second lay judge to join his lay brother by confining the sentence to a fine.

Judge Magie's opinions in the Supreme Court were always judicious and convincing, but he wrote several in the Court of Errors and Appeals that are outstanding, including that in the *Potteries case*, which was argued on one side by Lewis Cass Ledyard, and on the

other by Joseph H. Choate. He was a distinguished Chancellor, and thoroughly looked the part. The business of the Court of Chancery had so increased when he took charge that he surrounded himself with a group of Vice Chancellors, who, in my judgment, have never been surpassed, and he instituted the practice of having the entire court sit on the opening day of the term. He was also accustomed to have the Vice Chancellors dine with him at the Princeton Inn on the night before the opening of each term.

Justice Alfred Reed

The only other member of the Supreme Court at that time to whom I will refer was Judge Alfred Reed. He was very young when he went to the Supreme Court, and was immediately assigned to the Southern tier of counties as his Circuit. I may perhaps venture the statement that he shone more at the Circuit than *en banc*. I can recall no Supreme Court Justice who so ingratiated himself with the Bar and laity alike as did Judge Reed in that Circuit, which was considered the Botany Bay of assignments.

Atlantic City was in its infancy, and there was comparatively little civil business in the several counties that then constituted the Circuit. There were a few very able lawyers. Samuel H. Grey, David J. Pancoast, Henry S. Scovel, Mark Sooy (father of the present Vice Chancellor) and some others, rode the circuit and followed Judge Reed from one County seat to another, spending their evenings with the judge and with each other, and like historic lawyers, "striving mightily but eating and drinking as friends." Judge Reed never lost his hold upon the Bar, and constantly grew in the

respect and esteem of the people. He once, years afterwards, told me that his experience in South Jersey was one of his happiest memories. He successively became a Vice Chancellor and again a member of the Supreme Court. He was a graduate of Rutgers College, and I recall an amusing incident that occurred in connection with a question raised by State Comptroller J. Willard Morgan, who was a very able lawyer, as to whether Rutgers College should be paid a certain sum of money that had apparently been appropriated to it. Morgan was not a college man, and it was my duty as Attorney General to support the view the Comptroller entertained. There were a number of graduates of Rutgers in the Court, including Judges Dixon, Reed and Garretson. Somehow it became rumored that Princeton College was behind the opposition to the appropriation, and immediately the Rutgers men in the Court busied themselves to beat Princeton. Judge Reed was not well at the time, and had almost to be carried into the courtroom to vote. Rutgers won!

When Judge Reed was made a Vice Chancellor there was considerable doubt as to his fitness for the position, it being feared that his long training and experience as a common law judge had ill prepared him for a seat on the Equity Bench. But this was a misapprehension. He was a very successful and satisfactory Vice Chancellor.

I recall a peculiar incident that occurred in a case where I was employed to procure, if possible, a writ of *certiorari* to review proceedings that resulted in the revocation of a tavernkeeper's license to sell liquor in Gloucester County. The order of revocation, of course, left the tavernkeeper high and dry, so far as the sale of

liquors was concerned. It was thought that if a writ of *certiorari* were obtained, upon the ground of irregularities in the proceedings leading up to the order, the effect would be to revive the license while the writ was in operation, and so the proprietor would again be able to sell liquors. I thoroughly prepared myself and laid the whole matter before Judge Reed, whose Circuit included Gloucester County. He concluded that the writ should issue and signed the *allocatur,* expressing his regret that legal principles seemed to have been violated. Our client was then advised in writing that it was the opinion of his counsel, that his license was *ipso facto* revived, and that he might open his bar. There had been much feeling against the licensee; created by the flagrant way he had disobeyed the law before his license was taken away, and so the Grand Jury was summoned and the proprietor, under a severe charge by Judge Lewis Starr, was promptly indicted for selling without a license, and, of course, it was up to my associate and me to defend him.

The trial came on, and the Judge was obviously going to overrule our defense; so evidence was offered by the defendant that he had been advised by me that he might proceed on the theory that his license was revived by the *certiorari,* thinking the jury might find extenuation in that fact. Judge Starr (a warm personal friend of mine) pounded the desk and vigorously told the jury that this was no defense whatever. Notwithstanding the defendant's firm belief that there were at least two on the jury who would never convict him, a verdict of guilty was rendered in short order, the foreman solemnly announcing, "We find the defendant guilty, but direct that the Attorney General pay the fine!"

Justice Charles G. Garrison

Somewhat later, Charles G. Garrison went on the Supreme Court. He was the son of a leading Episcopal clergyman in Camden, and was first trained as a physician. He was, however, impelled to study law, and to considerable advantage used his knowledge of medicine and surgery for the short time he practiced law before he went on the Bench, as well as afterwards. He was at that time only 39 years of age. He had a keen intellect and was not only familiar with the principles of law, but was a prodigious reader and a thinker on scientific and philosophical subjects. He professed (perhaps with his tongue in his cheek) a belief in astrology, and in the influence upon life and character of the prevailing constellation at the time of one's birth.

His opinions are quite unique and he soon gained an ascendancy on the Bench, even among his veteran associates. He had a very keen sense of humor, which he enjoyed indulging, often at the expense of counsel who, nevertheless, without exception, were very fond of him. I recall an extraordinary experience I had with him. I was, as counsel, seeking to obtain a right of way for a new railroad into Ocean City. The Pennsylvania Railroad, already there, employed Samuel H. Grey to obstruct me in every possible way, so that it could enjoy without competition the business of at least another summer. One favorite weapon was the use of a writ of *certiorari* to review condemnation proceedings. The experience was peculiarly irritating to my clients and me, and the controversy became well known, with considerable sympathy for the under dog.

I received one day, at Newark, a short friendly letter

from the Judge, written at Merchantville, where he lived, addressing me as "Dear Bob," and stating that he had just allowed a writ of *certiorari* to review one of my attempted condemnations. He added: "I hear motions on alternate Saturdays at Camden." Feeling, not unnaturally, that the Judge sympathized with my efforts and believing he thought he had erred in allowing the writ, I concluded to accept what I thought was his invitation to move to vacate the writ, as soon as the papers reached me. I confess that upon examination of the papers, I could detect no ground for my motion, but concluded the Judge had some covert reason of his own. Upon reaching the Camden Court House, I found Mr. Grey waiting for me, with an air of serenity that did not disturb me, because of the letter. The moment I entered the Court Room, Judge Garrison interrupted an argument by saying, "I see counsel is present from a distance, and I will hear him at once." I arose with the greatest confidence, and said I had given notice of a motion to quash the writ of *certiorari* that the Judge had recently allowed. "Upon what ground?" inquired the Judge. The tone of his voice was repellent, rather than helpful. I then announced every reason of which I could possibly think. He listened with some manifest impatience, and when I finished, he remarked that there was no ground whatever for my motion, and that it was denied with costs. My discomfiture must have been apparent to Mr. Grey, for in the corridor, in his affectionate way, he put his arm around me and said, "Come over to my house and have a glass of sherry," adding, "You must have known that was a silly motion." I handed him the original letter which I had carried with me. He read it carefully, and handed it back to

Charles Grant Garrison

me with the remark, "My God!" Returning on the train, Justice Gummere joined me at Trenton, and still smarting a little (notwithstanding the sherry) I told him my story, and showed him the letter. He remarked, "If I were you, I would send Garrison a bill 'to services at your request in going to Camden to make a foolish motion to dismiss a writ of *certiorari,* $100, besides expenses.'"

A few years afterward when the State Bar Association met at Allenhurst in Monmouth County, and Garrison, James J. Bergen and I were seated around a table after the banquet indulging in something a little stronger than sherry, I told Bergen the story, and we both looked to Garrison for an explanation. His reply was, "The little boy lied." Unfortunately, I did not have the letter with me.

He was a man of great independence, and quite frequently dissented in opinions that many think are stronger and better grounded than those of the majority. They are, as one now reads them, rather philosophical than legal. He ranks, I think, among the greatest of our Judges. For years he sat next to Justice Dixon on the back row of the Judges in the Court of Errors and Appeals, and they became very fond of each other. He supplied a vein of humor that Dixon lacked. He specialized in practice motions, and whenever a question of procedure arose he would refer at once to a copy of the rules of the Court, profusely annotated in his own handwriting, and the Court invariably relied on his views. He was very popular with the Bar, everyone calling him "Charlie," but he never lost his dignity or influence. I happen to know that President Taft seriously considered appointing him to the Supreme

Court of the United States, at the time when he subsequently named Justice Pitney; so that the statement in the article on Flavel McGee, a prominent lawyer of his time, and a partner of Governor Bedle, which appeared in a history of Hudson County, and was evidently written by himself, to the effect that "he just escaped being a Judge of the Supreme Court of the United States," might be truthfully said of Judge Garrison. He was attractively frank. I argued the case of the *Vulcan Detinning Company v. American Can Company* in the Court of Errors, appealing from a decree advised by Vice Chancellor Bergen, who had thrown out the complainant on the doctrine of unclean hands. Garrison manifested the greatest interest in the argument, and in about a fortnight thereafter I happened to meet him on Chestnut Street, in Philadelphia. He stopped me and at once began to speak of his great interest in the case, and remarking in a quizzical manner that he was engaged in writing the opinion. I rather concluded that he would not have stopped me and spoken thus if he was against our side. The event showed I was right in my surmise.

As an evidence of his sincerity, I relate the following: While I was Attorney General, I had the appointment of an Assistant. At that time there was only one Assistant Attorney General. Considerable political influence was brought to bear upon me to select a prominent man from South Jersey, whom I knew slightly, but in whom I had never seen any evidence that he possessed much legal ability. I met Garrison on State Street in Trenton and told him of my predicament, and asked him to give me his real opinion. He thought for nearly five minutes and then said, "You place me in a

very embarrassing position. I have known him for years, and he is a warm friend of mine, but I can't say honestly he is the type of lawyer I know you want, or ought to have." I never had cause to regret that I followed his advice; although my good friend Governor Franklin Murphy (to whom I owed my own appointment) later remarked, "Robert, you are a good Attorney General, but a damn poor politician."

Chancellor Theodore Runyon

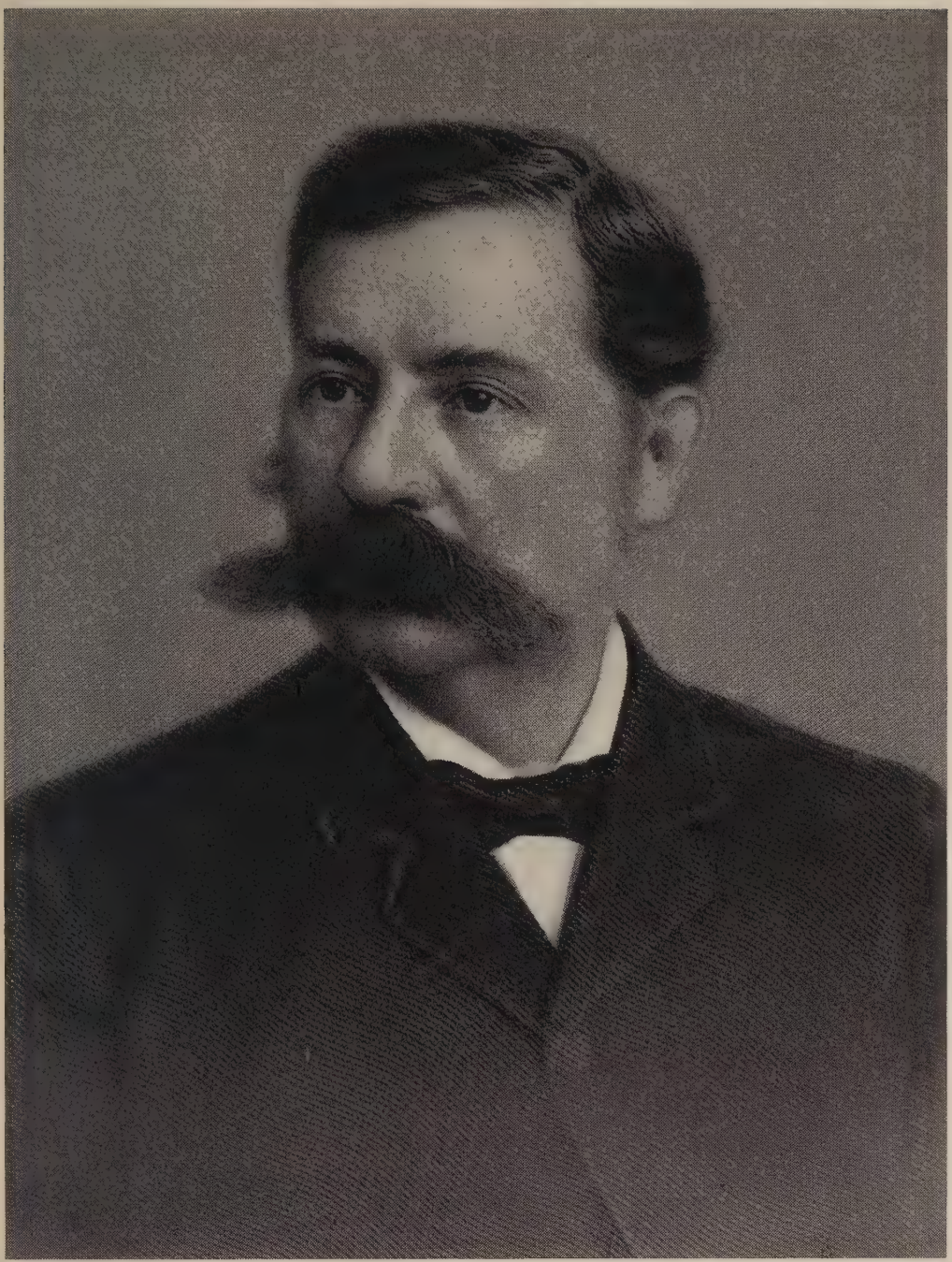
Let us turn now to the Equity side of our Court.

When I came to the Bar in 1882, Theodore Runyon was Chancellor, and Abraham V. Van Fleet was the sole Vice Chancellor. These two, promptly and in a satisfactory manner, disposed of the entire business of the Court of Chancery, and in addition Chancellor Runyon was an active and aggressive member of the Court of Errors and Appeals, as well as the sole Judge of the Prerogative Court. People at that time were just recovering from the panic of 1873, and there was much business, litigated and unlitigated, in the Court of Chancery. Both the Chancellor and Vice Chancellor Van Fleet had their homes in Newark, and outside of Trenton there was but one Chancery Chamber in the State, and that was on Broad Street, Newark, in the building just south of the Old First Church, where later Mr. Samuel Kalisch, in the height of his professional career, had his offices.

On motion days, once a week, the Chancellor would sit in the front room, and the Vice Chancellor in a small rear room. Runyon succeeded Chancellor Zabriskie. He had enjoyed a large county practice in Newark, had served as City Counsel and Mayor of Newark, and

had always been active in military matters. He was universally known as "General," a title that clung to him for years after he became Chancellor. I think his appointment as Chancellor was accompanied by considerable skepticism as to his fitness for the office, a doubt that was proven to be entirely unjustified. He manifested considerable business ability in his conduct of the important receivership of the Central Railroad of New Jersey, and of other companies almost as large, and I never heard a suggestion that all these great businesses were not carried on in a perfectly straightforward manner.

He wrote many important opinions in all three of the Courts over which he presided and he administered the ever-increasing business in Chancery most satisfactorily. He was always polite to counsel in the trial of cases, particularly so if they were young; and the result was that he soon obtained and always retained the affection of the Bar. One of my contemporaries, Howard W. Hayes of Newark, told me of an argument he had before the Chancellor in which the young man had been able to find only one case that was favorable to his view. That was in Ohio, and unfortunately had been overruled. Hayes frankly disclosed the situation to the Chancellor, who at once said, "Perhaps the overruling case was wrong. Let's study it out, *de novo*." With the enormous amount of business he disposed of, he never seemed to be too busy to talk. I recall that while I was still a law student I used to call now and then in the evening upon his very attractive daughter, who would receive me in the drawing room adjoining the Chancellor's library, where he worked. After I had been there about ten minutes he would come into the parlor



THEODORE RUNYON

and spend the rest of the evening chatting over his experiences at the Bar. I don't know how his daughter liked these interruptions! One evening he told me that however interested and busy he had been throughout his professional life, either at the Bar or on the Bench, he had never been bothered at night, but that, as he expressed it, when he put his shoes outside his bedroom door to be blacked, he always seemed to put out his cases also. Next day, walking to the office, I related this story to a young lawyer of Newark by the name of Willcox, who had very little business, and less mental equipment, and he promptly replied with a splutter, "Just like me!"

After having served fourteen years as Chancellor, Runyon failed of reappointment by Governor Green (who afterwards himself became a Vice Chancellor) and he opened an office in Newark and resumed practice. He laughingly told how, when he said good-bye to his long-time associates in the Court of Errors and Appeals, he begged them not to quote his own decisions against him when he appeared as counsel before them!

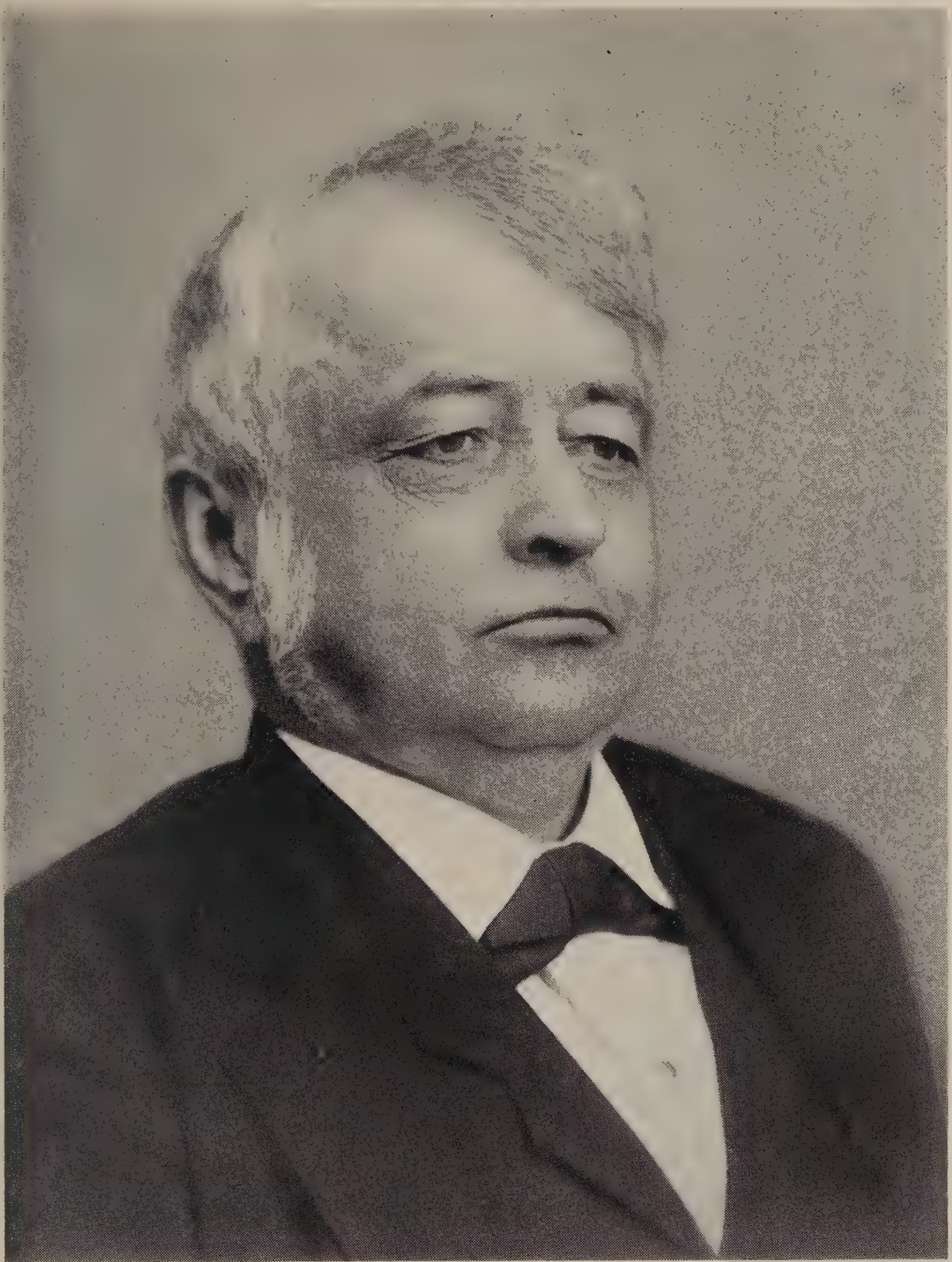
Vice Chancellor Van Fleet

I shall never forget Vice Chancellor Van Fleet. He was a most excellent lawyer of the old school and, in my opinion, one of the best Vice Chancellors we have ever had. He had old fashioned ideas about the conduct of a hearing in Chancery, which probably would be utterly impracticable in the hurly-burly of modern times; but nothing could hurry him. He would say, "You know I am paid by the year, and if I am not busy here in Court, I have plenty to do elsewhere."

Counsel for the complainant would solemnly read

the bill of complaint, the Vice Chancellor taking copious notes in longhand. After the pleadings were all read, and the nature of the issues discovered, he would listen to the evidence with the greatest care, and then would expect elaborate oral argument, besides briefs. He would study the record, making notes of the evidence as stenographically reported, and then, having become saturated with the case and reaching a conclusion, he would carefully write out in longhand an opinion in trenchant language, and woe betide the fraud doer! His decisions were seldom reversed, and in many instances were willingly acquiesced in by the defeated litigant.

He was not a prude. He had a strong social sense and enjoyed a game of whist with his friends and his charming wife in the evening after his day's work. But he had a highly ingrained sense of right and wrong. It was my privilege to have many talks with him in his private chambers on the third floor of the old National State Bank Building on Broad Street in Newark. I can see him now sitting in his working chair, with his left foot raised on a footstool, talking of the importance of the development of character—particularly for a young lawyer. Shaking his head solemnly he would say, "Robert, if I could not look myself straight in the face when I am shaving mornings, I would not want to live!" In my judgment, no one can fully measure the ethical value of his life and career upon his contemporaries. I enjoyed sitting in the audience on his motion days, listening to him dispose of business, or as he would call it, administering justice. Imagine my consternation on one occasion when, in a crowded court room, a question arising as to the admissibility of an affidavit, he inter-



Abraham V. Van Fleet

rupted the proceedings by saying, "I see in the room a young man fresh from his study of the law of evidence," and addressing me: "Mr. McCarter, I am going to ask you as *amicus curiae* to give the Court your views as to whether the exception to the rule against the admissibility of hearsay evidence as to births and deaths that occurred long ago also extends to similar entries in books or on monuments that are a long distance away, although they may be contemporaneous!"

He also had a great belief in the observance by counsel of the amenities. A case was called and counsel for the complainant announced that he was ready, but no one answered for the defense. He looked quizzically at the complainant's counsel and said, "What do you propose?" When counsel replied, "We are ready and are entitled to proceed," the Vice Chancellor said, "Very well, Sir, you *are* entitled to proceed, but in the absence of Counsel for the defense, the Court will be his counsel." An adjournment was taken.

Chancellor McGill

Alexander T. McGill was appointed Chancellor by Governor Robert S. Green (afterwards Vice Chancellor) in the place of "General" Runyon. He had been Prosecutor and County Judge of Hudson County, but so far as was then generally known, he had had comparatively little experience in equity, and it was said (I don't know with what truth) that he had never appeared before the Court of Errors and Appeals, over which he was now to preside. All the friends of Chancellor Runyon began to murmur, and Vice Chancellor Van Fleet threatened to resign.

Chancellor McGill entered at once upon the dis-

charge of his duties, and completely routed the "doubting Thomases" because of his integrity, industry and ability. Vice Chancellor Van Fleet became one of his best friends and most ardent admirers. I can recall, however, when a case on the law side of the Court of Errors and Appeals would be reached, and the Chancellor had to preside, how Chief Justice Beasley would try his patience by failing to vacate the presiding officer's chair, and require the Chancellor patiently to wait until the Chief would realize the situation and move along to the seat on his right!

Chancellor McGill administered his office with marked ability and success. He was a perfect listener, seldom, if ever, interrupting counsel even to ask a question, but his decisions would clearly manifest that he had thoroughly grasped the case. He was once hearing motions in Jersey City, and seemed greatly embarrassed at the first appearance of a female lawyer in a Court of New Jersey. She prefaced her argument by inquiring, "Shall I remove my hat?" He allowed her to remain covered.

He would sit by the hour listening to lawyers read long affidavits, interspersed every few lines with the useless but time-consuming words "and this deponent further saith." I never saw him in the least impatient or in the slightest degree ruffled. He wrote many opinions of great importance, notably in the case of *Stockton, Attorney General, v. the Central Railroad Company and others,* designed to upset the so-called coal combine, which certain legislation had purported to authorize. The ground of attack was that the situation was an invalid monopoly. The counsel for the three defendant railroads were Chancellor Williamson for the Central

Railroad, James K. Gowen of Philadelphia for the Philadelphia & Reading Company, and the late Thomas N. McCarter for the Lehigh Valley Railroad Company. The opinion was filed in midsummer and it upset the combine. All of the counsel being on vacation, an S.O.S. call came to our office for me to come at once to Philadelphia. I found the newly installed President of the combined three roads behind his desk. He had very large mustachios, but lacked an exhibition of skull and cross-bones. The three General Solicitors of the three railroads stood trembling. I was naturally more or less disturbed, for while I had had nothing to do with the argument, I was greatly interested in the case. As soon as the President saw me, he said "Well, so you have permitted us to be licked." I replied that the decision was against him. He inquired if there was an appeal, and to my affirmative reply he asked, "To what Court, and of what does it consist?" I described the Court of Errors and Appeals as it then existed. He cogitated for a few moments, brought his fist down on the desk, and to the horror of the more diplomatic General Solicitors said in low tones, "I tell you what we will do. We will appeal the case to the Court of Appeals *and buy* every God-damned Judge!" There I stood, a young lawyer, brought up to respect and believe in the Judiciary of New Jersey. There were the three General Solicitors hopping around like hens with their heads off, two of them, as well as the new President, entire strangers to me. I indignantly said, "You might as well talk about buying the Angel Gabriel!" I was not thereafter popular with the executive, although his occupancy was short lived, for the sober second thought of the management, largely inspired by the experienced counsel

who had returned from their vacations, determined to accept the decision and to abandon the project. No appeal was taken, so convincing was the opinion of the Chancellor.

It was not a great while after this incident that the so-called Progressive movement against large corporations received considerable momentum, and I have often thought that many of them received what they deserved.

One Monday morning, on attending motions before Chancellor McGill at Jersey City, we found that Mr. Haggerty, the Sergeant-at-Arms, had interposed between counsel and the Bench a line of small tables that prevented access to the Court. I inquired why that had been done, and Haggerty replied, "To prevent Lindabury from putting his mouth in the Chancellor's ear."

My impression of Chancellor McGill is that he was one of those finer spirits one seldom comes in contact with, and I can not imagine his having an evil thought. His life was given up to following the dictates of a highly developed sense of duty. Whether he could have coped successfully with the prevalent cross currents that presently beset the judicial life may be questioned. His was too simple a nature to have ever guessed what was going on. He died in the midst of his great career, beloved and mourned by all. Some of his successors have been more sagacious, their ears have been nearer to the ground, and they have heard and listened to music to which McGill's ears were not attuned.

Chancellor Walker

It was hoped by everyone and expected by many, that Governor Woodrow Wilson would appoint Fred-

eric W. Stevens, a most excellent and experienced Vice Chancellor, to succeed Chancellor Pitney upon his elevation to the Supreme Court of the United States. Stevens was a good Democrat, and possessed of all the qualifications that one would suppose would have captured the mind of such a Governor. He was not, however, a politician, and to the surprise of everyone, the Governor chose Edwin Robert Walker, who had been a Vice Chancellor for a number of years. One evening while the appointment of a Chancellor was still imminent, a number of lawyers and judges were assembled at a meeting of the Fortnightly Club at the residence of Chauncey G. Parker on Mt. Prospect Avenue in Newark. Frank Bergen suggested that he ring up Trenton to ascertain if the appointment had been made. We all listened impatiently, and finally heard Bergen repeat the message, "Walker is appointed." I saw a most significant glance pass between Justices Willard P. Voorhees and Francis J. Swayze. The others of us, who were not judges, were outspoken in our disappointment, and continuing the candor with which I have written these memories, I am bound to confess that I never quite recovered from my own disappointment. I cannot help but think that Chancellor Walker lowered the tone and the character of the Court of Chancery. Up to the time of his administration, the Court, as I had known it, was entirely free of political influence, but Chancellor Walker seemed willingly to assume administrative duties, such as the selection of Jury Commissioners, with results that were as bad as, if not worse than, before their selection was given to the Chancellor. In this way, his close connection with politicians was made manifest, and very shortly the

same influence brought about the selection of some persons as Vice Chancellors whom I am sure his predecessors would never have dreamed of appointing, and with resultant scandal and shame. Fortunately there were brilliant exceptions, some still living and some now dead.

Chancellor Walker was very popular, had many friends, and, in my judgment, failed in appreciation of the serious nature of the duties of his great office. He wrote a full share of opinions in the Court of Chancery, in the Prerogative Court, and in the Court of Errors and Appeals; but I recall few, if any, of outstanding character or importance. It seemed to me he never exercised the influence over the Judges of our court of last resort that its presiding officer should, and usually has done.

Vice Chancellor Stevens

I knew Stevens well, perhaps as well as any contemporary at the Bar who did not often play golf! He was not socially inclined, and very shy; so much so that some wag expressed surprise that he ever had summoned up sufficient courage to propose to the lady who became his wife. He would glide along the street as if he was afraid to meet anyone, and devoted himself so assiduously to his profession that he soon became a leader, enjoying the unstinted respect and admiration of the higher judges, several of whom put their sons in his office. This was perhaps not as advantageous to the student as the parent supposed, for Stevens did not have much office business, and never desired it. He said his idea was to have a few cases with plenty of time to study and prepare them. His office was on the same

floor as my own, and I have frequently observed an accumulation of mail lying on the floor in the public hall, because he was away, at some library or at his house, studying an important case. He had no particular office force, not even a stenographer. But you had to look out for yourself when the case was reached! The bashful one outside is now, in court, like a bull in a china shop, and one could not but sympathize with the witness he cross-examined. He was a perfect legal machine, lacking in sympathy and apparently in heart. His industry was unmeasured; and I think it was the chief cause of his success. I was against him once (acting for the East Jersey Water Company) in condemning a mill site on the Pequannock for the Newark water supply. He was to sum up on his appeal before the jury; and as Court opened he came to me, after depositing on the table a bottle that looked as if it might be filled with whiskey, and said, "I am going to ask a favor of you. I have not had a moment's sleep, having worked all night. I am almost played out and have that bottle of coffee to keep me going. Please don't interrupt me, even if you think I am inaccurate, but reserve your corrections till I have finished." I, of course, said I would do as he requested, and I listened to a remarkable argument of nearly two hours' length, in which I detected no inaccuracies.

He had been appointed Judge of the first District Court upon its organization in the City of Newark, five years after his admission to the Bar, and is commonly reputed to have made the best Judge of either of those Courts in Newark. While still a young man he was chosen by Vice Chancellor Van Fleet, with Samuel Kalisch, to prosecute the President of the Newark Sav-

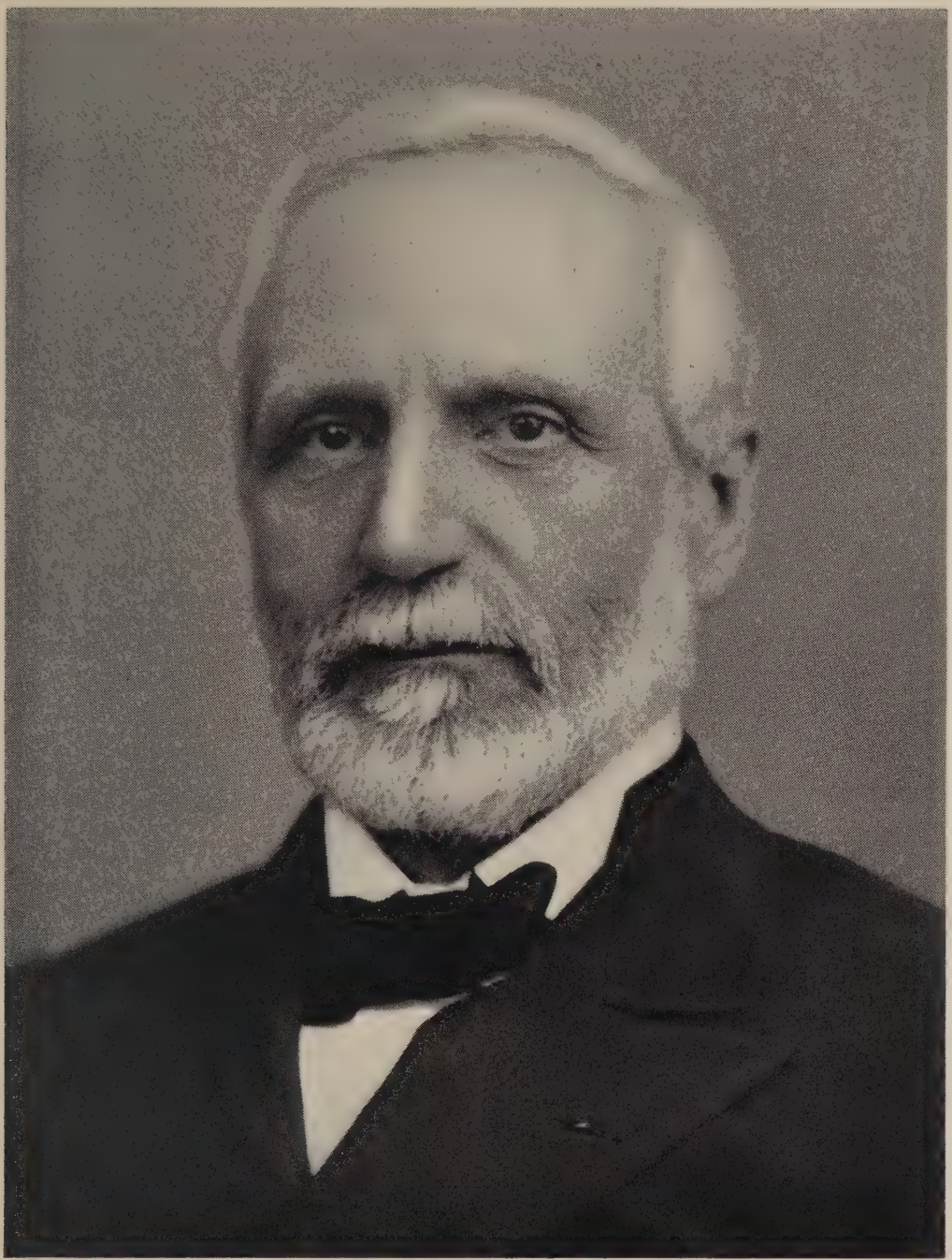
ings Institution for contempt in having, in violation of an Order of the Court of Chancery, taken securities of that institution (in Receivership) out of the State. If adjudged guilty, the Bank President would certainly be sent to jail. Former Chancellor Williamson, Thomas N. McCarter, Sr., and John R. Emery represented the defendant, and the fat was on the fire. The Court believed that the poor depositors demanded a lamb for the sacrifice and proposed, if it could, to give them one. Vice Chancellor Van Fleet, who heard the case, promptly overruled the defense that the order alleged to have been contemned was beyond the jurisdiction of the Court that made it, and after a protracted hearing in a court-room crowded with angry depositors, he found the defendant guilty of contempt. An appeal was taken and an elaborate and scholarly opinion by Chief Justice Beasley (*Dodd v. Una*) reversed the Court of Chancery, holding, as counsel had contended, that there could be no contempt of court in the disobedience of an order the court was without jurisdiction to make. Both Mr. Stevens and Mr. Kalisch acquired great reputations by their conduct of this celebrated case, although they were not ultimately successful; and so it was not surprising that Chancellor McGill appointed Stevens a Vice Chancellor. He was just fifty years of age, and in the height of his capacity. He fulfilled all the hopes that his admirers entertained of him, making a most able and satisfactory equity judge. No one ever questioned the purity and integrity of his conduct; he quickly forged his way to a leadership among his able associates in the Court, and he suffered few reversals in the Court of Errors. After he had been a few years on the Bench I had an oppor-

tunity to inquire how he liked the job. His reply was to the effect that his private practice had been a most delightful experience, every case, with hardly an exception, being both important, interesting and variant from the others; whereas on the Bench the bulk of his time was spent in listening to inexperienced lawyers endeavoring to try divorce cases. I observed, however, that he did not resign, but I always believed he was disappointed that he was not given the Chancellorship, although, of course, he never said so.

Vice Chancellor Pitney

Of all the judges I have ever known, Henry C. Pitney was the most unique and attractive. He had great ability, a long and varied experience at the Bar before going upon the Bench, a brutally frank nature, which he seldom, if ever, sought to restrain; the highest conception of the duty of a trustee, and a firm belief in the marked distinction between right and wrong. He was most industrious, and his opinions bristled with citations from the English and American Reports. He had apparently little pride in their literary features. He wrote an atrocious hand, and so he always dictated his opinions to a stenographer, and so long as they declared the law applicable to the facts and plainly expressed his disapproval of wrong doing, he was content. He always felt the necessity of buttressing his views of the law by generous and abundant citation of authority, yet he was no respecter of persons. The most eminent member of the Bar, frequently a personal friend, would receive the most brutal rebukes from the Bench; and this practice interested the newspaper reporters, who of course reported them. When the Vice Chancellor first saw in

cold print a description of some such occurrence, he began to abuse the press, and at least in one instance initiated proceedings for contempt against a reporter. All this, of course, antagonized the press, and a state of hostility arose between the newspaper fraternity and the Court, which the Vice Chancellor took no pains whatever to appease, and throughout his judicial career he was constantly and widely advertised. So marked was this that in one instance at least Chancellor Magie was induced to revoke a reference to Vice Chancellor Pitney, and take a case out of his hands. The following incident I think largely influenced the Chancellor to take that unusual and drastic course. I was concerned in a case of some importance that was being tried before Vice Chancellor Pitney. On my side were Mr. Wheeler H. Peckham, who had been nominated for the Supreme Court of the United States by President Cleveland, but whose confirmation was defeated by Senator Hill of New York; and Mr. James W. Osborne, afterwards in the office of the District Attorney of New York. Against us were Mr. Julien T. Davies, a distinguished lawyer of New York, and Gilbert Collins. The Vice Chancellor early manifested his leaning to the other side, and the situation became quite intense and unpleasant. Finally, Mr. Peckham suggested that I should see the Chancellor and if possible prevail upon him to revoke the reference to Vice Chancellor Pitney, upon the ground that our clients felt they were not getting justice. Nothing but my great respect for Mr. Peckham would have prevailed upon me to make so audacious a suggestion to the Chancellor. I did so; with the result that he directed me to incorporate my story in an affidavit, serve it on the other side, and give



Henry C. Pitney

notice of the application. Mr. Collins, upon being served with the papers laughed me out of his office by stating he had never heard of so audacious and absurd a move. The Chancellor heard us at Trenton, listened attentively, but with his usual politeness and dignity to both sides, and announced his determination to grant our motion, revoke the reference to Vice Chancellor Pitney, and to refer the case for further hearing and disposition to Vice Chancellor Reed.

I will never forget my first meeting with Vice Chancellor Pitney after that incident. I rather avoided meeting him, as I saw him coming down Broad Street in Newark. He spied me, however, and with his lanky right hand beckoned to me. I expected to get, well, I won't say what! Imagine my surprise and relief when he blurted out with his loud voice: "That's right, Bob. If the Court's against you, get rid of him!" and he slapped me on the back with manifest approval of my tactics as an advocate, and remained throughout his career as Vice Chancellor a warm personal friend of mine.

The influence of the press to which I have alluded is well illustrated by what had occurred shortly before Chancellor Magie listened favorably to my application. Mr. Peckham had been arguing for a certain construction of one of the sections of our Corporation Act, and had remarked that a similar section in the Corporation Act of Massachusetts had been repealed by that Commonwealth. The Vice Chancellor, misconstruing the remark as if it referred to a decision of the Supreme Court of Massachusetts, blurted out that no one paid any attention to decisions of the Supreme Court of Massachusetts; that that court had no standing what-

ever, and that it was absurd in Counsel to refer him to a decision of that court. Next day the papers were full of the remarks of the Vice Chancellor; and on the following day (so Chancellor Magie later told me) the Chancellor was playing golf with a judge of that court, up in Maine, when the latter inquired, "What kind of a judge have you got as one of your associates in New Jersey?" and then told him what he had seen in the papers. The Chancellor was very much annoyed, and hence it was that upon his return to work a few days later when I made my application to revoke the reference, he was in a mood to help me!

I can well imagine the outraged indignation of that Massachusetts Judge. It so happened that with my wife, one summer, I was driving in a stage in the Adirondack Mountains. Sitting behind us were a lady and gentleman with whom we engaged in pleasant conversation. We finally drove up to an inn for luncheon, and there sitting on the porch was Justice Manning M. Knapp, in a blue flannel shirt, enjoying his vacation. He welcomed me enthusiastically, calling me "Bob." After lunch, we four resumed our seats in the stage and the gentleman asked me who the man was that spoke to me so familiarly. I replied he was a Justice of the Supreme Court of New Jersey. He turned to his wife and said, "Imagine a Judge of the Supreme Judicial Court of the Commonwealth of Massachusetts sitting on the front porch of an hotel in a flannel shirt!" I later learned from him that he was one of those sanctified Judges.

The Vice Chancellor had built up and controlled a water company that supplied Morristown and its environs with water. The Company, known as "The Morris Aqueduct," had, under the personal guidance of the

Vice Chancellor, grown up from small beginnings, and Mr. Pitney became a good deal of an hydraulic engineer, and believed he knew more about hydraulics than most engineers. He used to carry in his pocketbook a certain formula for computing the flow of a stream, and this he would produce whenever an engineer was testifying before him, and with great personal satisfaction he would vigorously cross-examine the witness. There was a great deal of wealth in and about Morristown, and these consumers of water did not bother themselves much about the rates. After my friend Edward A. Day moved there from Newark, he told me it cost him fifty cents every time he took a bath! At any rate, whether properly or not, the Morris Aqueduct had the reputation of charging very high rates.

I was employed to assist the late Thomas P. Fay, Counsel for Long Branch, in Monmouth County, to endeavor to secure from the Tintern Manor Water Company, which supplied that municipality with water, lower rates for both the public and the private supply. This was, of course, before the creation of the Public Utility Commission in New Jersey. We filed a bill in Chancery to secure the hoped-for reduction, and, of course, our one desire was to keep the case out of the hands of Vice Chancellor Pitney. Somehow he learned of the pendency of the case, and somehow—we were never able to learn just how—he secured a reference of the case to himself. It came on for final hearing before him in Newark. The late William H. Corbin was the able counsel for the Water Company, and he assured me that he had nothing to do with the order of reference. On our side we introduced the rates prevalent in Perth Amboy and many neighboring municipalities;

the Water Company countered by introducing in evidence the rates prevalent in such other places, as were, it thought, good for the Tintern Company. While this was in progress, I inquired of Corbin if he was going to offer the rates in Morristown. He laughingly replied, "I wish I dared!" The Vice Chancellor listened patiently, but I thought somewhat intolerantly, to this evidence. Next day, as soon as he went on the Bench, and before anyone had an opportunity to say a word, he put his hand in his inside pocket, produced a paper, and turning to Jesse Salmon, the stenographer, he said: "I offer the rates of the Morris Aqueduct; have the paper marked!" I ventured to object, but without hearing me he overruled the objection, and they went in. Corbin and I exchanged looks. The Vice Chancellor wrote a long and able opinion in the case, upholding some and reducing others of the rates.

I remember also an incident that occurred in the Court of Errors just before the argument of the appeal in that case. It came on in the June session of that court, and it so happened that our case was the last one to be argued that term. The record consisted of several hundred pages, and I despaired of arguing the case satisfactorily in the time allotted. I made a motion for extra time, which, if granted, would have required the Court to come back and finish after the Fourth of July. It was intensely hot, and there sat the fifteen judges, fanning themselves lugubriously and looking like the wrath of God. Finally, one of them said, "Why, don't you realize we will all forget what you say before we take up this case for decision in the autumn, and therefore you are inflicting upon us a painful duty in this hot weather, in resuming after the Fourth of July, all

to no purpose or end?" I replied that I imagined it was just as uncomfortable for me to argue the case as it would be for them to sit still and listen, and that I was not looking for fun; that if they were in earnest in the intimation that the oral argument was useless anyway, I would not bother them, and would spare myself. Considerable disturbance followed, with the result that I promised to close that day, and home well pleased they went. The Vice Chancellor was affirmed!

I recall another interesting incident about Pitney. The case of *Sternberg v. Wolf* was being hotly contested before him. It was an application for a receiver for a corporation the stock of which was evenly divided between Sternberg and Wolf. The Vice Chancellor had recently been reversed in a somewhat similar case where he had appointed a receiver and he rather smarted under the reversal. He somewhat naturally determined not to appoint a receiver in our case, and thus if possible to fall in line with the views of the Court of Errors—for whom he frankly confessed to having not too much respect! The other side appealed, and after the lapse of about a year Judge Depue wrote an opinion for the Court reversing the Vice Chancellor and holding that a receiver should have been appointed! The Vice Chancellor remarked to Counsel that it seemed to him he was damned if he did, and damned if he didn't. The *remittitur* came down, directing a reversal of the decree and the appointment of a receiver. A motion was made by Wolf's Counsel for the appointment of a receiver pursuant to the terms of the *remittitur*. I will never forget the look of despair that the Vice Chancellor gave me as he hopelessly turned to me and asked me what I had to say. I suddenly had an inspiration, and rising,

told the Court that this *remittitur* spoke of a time a year and more ago, and of a situation that doubtless had in the meantime materially changed; that the Vice Chancellor was not a mere clerk of the Court of Errors, but that before he did appoint a receiver, he should judicially inquire into the present situation. I resumed my seat. I never saw the countenance of anyone change as did his. He almost jumped out of his chair. He raised his right arm, long and skinny as it was, to its full length, and fairly yelled, "Counsel has well said I am no mere Clerk of the Court of Errors. My right arm [shaking it] will wither before I, at *this* time, appoint a receiver!" He arose and stalked out of the court-room, leaving the counsel on both sides a little at a loss to know what to do. I learned afterward that in the corridor of the Prudential Building, where the Court room was, he met my father, an old friend of his, and said, "Tom, Bob has just made the finest argument I ever heard!" and passed on. I would not repeat the last part of the incident, had there been any foundation for the remark.

I must speak of another incident in the Tobacco case, to which I have twice alluded, in which from the start the Vice Chancellor plainly manifested a strong leaning for our enemy. Among our clients was the Hon. Bourke Cockran, then a member of Congress, a leading politician in New York, and a great orator. He sat behind Mr. Peckham and me, and, impressed with the manifestly hostile attitude of the Court, remarked time and again to Mr. Peckham and me, "You don't know how to treat the Judge. He is *perfectly straight*, but you don't handle him properly." All this was rather irritating to counsel, and I think the Vice Chancellor

West Jersey Bar Group Taken in June, 1896
At a Shad Dinner in Washington Park ("Billy Thompson's")
by D. Trueman Stackhouse, Esq., of the Camden Bar

1. Samuel K. Robbins. 2. Wm. S. Casselman. 3. Chas. Van Dyke Joline. 4. E. Ambler Armstrong. 5. E. G. C. Bleakley. 6. J. Willard Morgan. 7. Thomas P. Curley. 8. Peter V. Voorhees (nephew of Peter L.). 9. Chas. Grant Garrison. 10. Samuel W. Beldon. 11. A Mr. Zane, of the Philadelphia Bar. 12. B. F. Haywood Shreve. 13. Richard T. Miller. 14. Charles R. Stevenson. 15. Henry C. Pitney. 16. Lewis Starr. 17. Schuyler Colfax Woodhull. 18. Henry S. Scovel. 19. Alfred Reed. 20. Horace F. Nixon. 21. George Vroom. 22. Benjamin D. Shreve. 23. Charles I. Wooster. 24. Henry I. Budd. 25. Howard Carrow. 26. Israel Roberts. 27. Caleb D. Shreve. 28. George H. Pierce.

observed our annoyance and remarked to Mr. Cockran (whom he pretended not to recognize) that he had very competent counsel, and he had better let them conduct the case. I then arose and introduced him to Vice Chancellor Pitney, with all the gusto I could summon, and the cause proceeded. Mr. Julien T. Davies of Davies, Stone & Auerbach, a distinguished lawyer of New York, had argued the case for his side. Mr. Peckham followed, having a terrible time, with many interruptions similar to the one about the Supreme Court of Massachusetts; and before the day closed, at Cockran's request, he was granted a half hour's time for further argument on our side. The case had been theretofore heard at Newark, but at Mr. Cockran's suggestion it was arranged that he should be heard in Jersey City. We all assembled there, and I at once realized why Mr. Cockran had preferred Jersey City, for he had the Court room almost filled with reporters representing New York papers. Mr. Cockran arose, bowed to the Vice Chancellor, beamed upon the newspaper men, and after again reminding his associates *sotto voce* that the Vice Chancellor was perfectly honest, proceeded with his argument. The Vice Chancellor never interrupted him once, but sat there, to all appearances completely captivated by the argument, his face flushed, and supported by his right hand. Cockran finished in his half hour, bowed to the Court, smiled at the reporters and said to us, "I told you *I* could manage him!" He then sat down supremely satisfied with himself, and particularly with his diagnosis as to the character of the Vice Chancellor.

Mr. Davies arose to reply, he too apparently impressed with the argument. He prefaced his speech by

saying, "In reply to the learned and eloquent argument of the distinguished counsel who has just taken his seat, I beg to say"—when the Vice Chancellor interrupted and said very quietly, but positively, "Mr. Davies, you may resume your seat. I assure you that every word Mr. Cockran has said went in one of my ears and came out of the other."

Cockran, completely surprised, glanced first at the reporters, and then turning to Mr. Peckham and me remarked, "He is corrupt as Hell!"

What a laugh the Vice Chancellor and I had at a later day, when I described the whole thing to him!

Before we adjourned on one of the days of this hearing, Mr. Peckham did or said something that greatly irritated the Vice Chancellor. He became very angry and began to pound the desk with his gavel, telling Mr. Peckham to sit down and behave himself. Peckham stood there unmoved and unperturbed, remarking (between whacks) "Your Honor has the gavel." The Vice Chancellor grew livid, and I really feared he would have apoplexy. He left the Court room in great anger.

Mr. Peckham and Mr. Pitney both lived in Morristown, and by the time Mr. Peckham reached the Hoboken Station of the Lackawanna Road, he found the Vice Chancellor walking up and down the platform. He walked over to Mr. Peckham, took him by the arm and said, "Wheeler, let's sit together going up," and they did!

One of the hearings of the Tintern Manor Water case, to which I have alluded, took place in Long Branch. Former United States Senator Rufus Blodgett was the President of the water company, and, in the truest hospitality, at lunch hour had a stage come to the

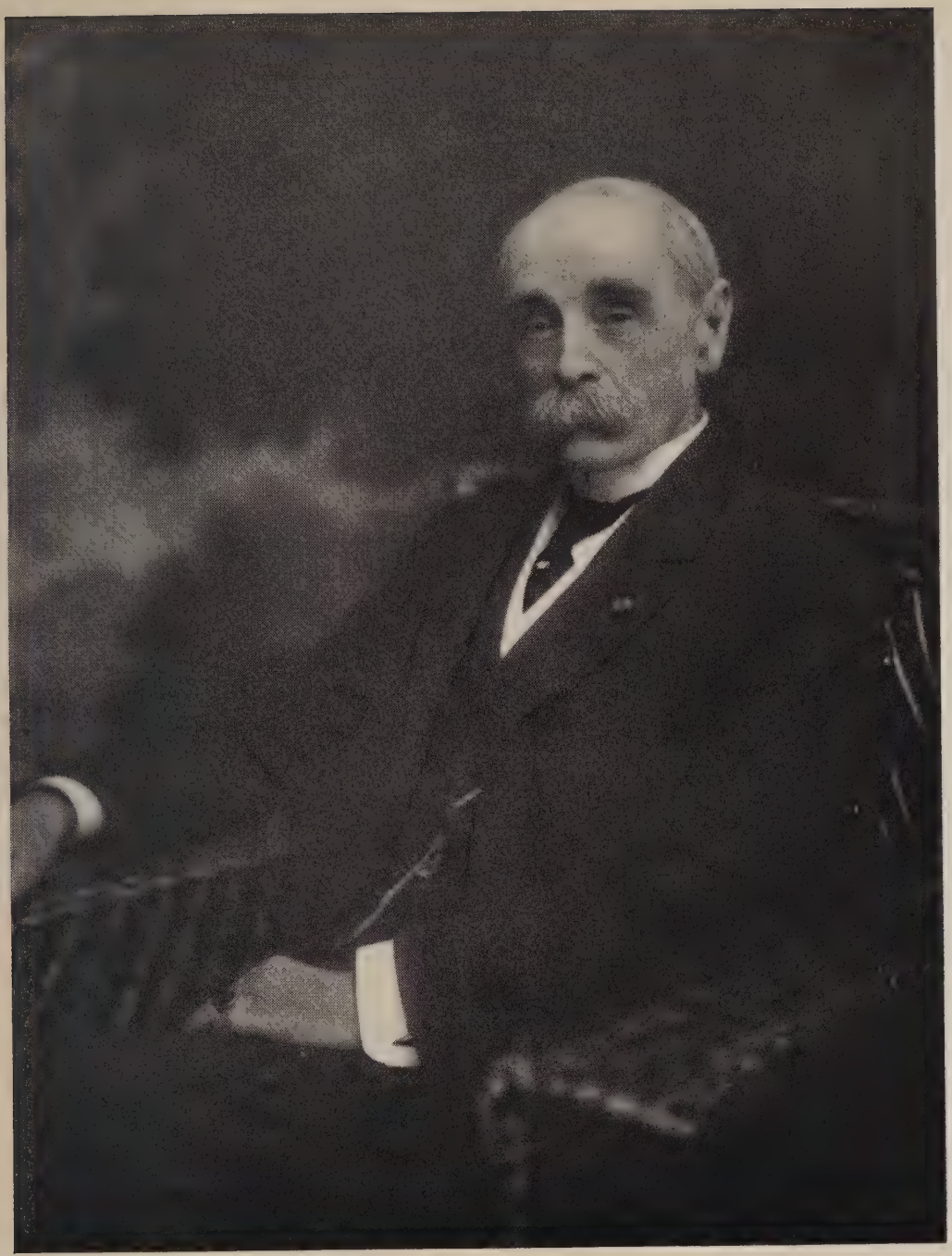
Court room, and he invited the Court, the stenographer, and counsel on both sides to be his guests at luncheon, for which he had ordered a private room at a restaurant. We all drove down to the restaurant in the stage, and sat down to a most pleasant meal, the Vice Chancellor at one end of the table and Senator Blodgett at the other, with the counsel of both sides and other interested parties between them. As two o'clock approached, the Vice Chancellor suddenly arose and inquired "How much do I owe for my lunch?" Senator Blodgett politely replied, "Nothing, you are all my guests today." "Not at all," the Vice Chancellor replied. He took a silver half-dollar from his pocket, rolled it down the table toward Senator Blodgett and strode out of the room.

I could not help being reminded of this incident some years afterward when I was in Jersey City before Vice Chancellor Bergen in our Court of Chancery arguing a motion growing out of the famous *Northern Securities* decision of the Supreme Court of the United States. A very large sum of money was involved. The noon adjournment was taken, and the Vice Chancellor suggested to me that we should eat lunch together at the restaurant of the Pennsylvania Railroad. The case was, of course, not mentioned during lunch, and as I do not smoke, the Vice Chancellor went to get a cigar, leaving me to pay for our joint lunch. It never dawned upon him or on me to think that a forty cent lunch would influence his decision in a case of that great importance. Mr. Bergen did not feel it necessary to surround himself with a panoply of ridiculous propriety as against an intimate friend. That in turn reminds me of an amusing incident that occurred in a case I was trying before

Judge Frederick F. Guild in one of the District Courts of Newark. I was representing the Adams Express Company, the defendant, and after a vigorous argument on a motion for a non-suit, an adjournment was taken for lunch. The Clerk of the Court, my friend John O'Connor, whispered in my ear that Judge Guild and Judge Lintott were going to lunch together and would be glad to have me join them. I of course accepted, and we had some delicious spring shad together. After lunch Judge Guild and I crossed Broad Street and started to walk up to the Court room when he said to me, "I think you had better walk up on the other side of the street." I concluded, I think not illogically, that he was going to grant my motion for a non-suit. Imagine my surprise at his prompt refusal of my motion!

Vice Chancellor Emery

I knew Emery very well, having been brought into contact with him while he was still in practice. He started in Trenton, but came later to Newark, where he developed a large business, particularly in the equity side of our Courts. He did not marry until quite late in life, and prior to his marriage he lived at a boarding house in Newark, where Vice Chancellor and Mrs. Van Fleet also resided, and he formed a warm friendship with them. While still in active practice he was a pertinacious student of the law, so that when in 1895 he was appointed Vice Chancellor by Chancellor McGill, he went on the Equity Bench magnificently grounded in the principles of equity jurisprudence, and he approached the discharge of his duties as Vice Chancellor with the greatest conscientiousness, a feeling he continued to manifest until he resigned in 1915. I heard



John R. Emery

him say that when Pomeroy's Equity Jurisprudence was published (after he became Vice Chancellor), he made a complete written analysis of it, and I think he may be properly characterized as the most scholarly of our Chancery judges of his day, so far as the principles underlying equity jurisprudence are concerned. He also told me he invariably kept a pencil and memorandum pad at his bedside, and frequently jotted down thoughts that occurred to him during the night concerning cases that were before him. He stated that he found there was some inspiration in these night thoughts. After he had reached a decision in any case, he would write down his conclusions, and put them away for further reflection, or, as he expressed it, to let them "cool off." Sometimes he found that he would come to an entirely different view, so that his final opinion, when filed, would not infrequently be just the opposite of his first conclusion.

Notwithstanding his great learning, conscientious care and untiring industry, he was quite frequently reversed by the Court of Errors and Appeals, and it seemed to me that that Court felt he was rather impracticable and would let a legal principle run away with him. Conspicuous examples of his courage were the *Berger* and *Hodge* cases against the *United States Steel Corporation*. I was of counsel for the complainants in each of those cases, and we succeeded in securing our desired injunctions from him notwithstanding a studied effort by newspaper propaganda to decry our case and stigmatize our clients. The fact that the restraints interfered with important measures of the United States Steel Corporation, and involved so influential a firm as J. P. Morgan & Co., in no way deterred

him from following the law as he understood it. While one of these cases was under consideration he was invited to lunch by his old friend Governor Franklin Murphy. On arriving at Mr. Murphy's residence the Vice Chancellor was introduced to George W. Perkins, then a member of the Morgan firm and whom of course the Vice Chancellor had not expected to meet. After luncheon had progressed, Mr. Perkins surprised his host and shocked the Vice Chancellor by bluntly asking the latter, "Why don't you decide the Berger case? Delay is almost as bad as a decision against us, and that, of course, should never be." The Vice Chancellor's refined, intellectual countenance was covered with blushes, and I believe he replied by leaving the table. The incident must have been peculiarly distasteful to the Vice Chancellor, for after he went on the Bench he had carefully avoided lunching at the Essex Club in Newark, where he would be apt to meet lawyers.

I have spoken of his scholarly acquaintance with the underlying principles of equity jurisprudence. This knowledge extended to the English cases which he highly prized and frequently quoted. A practitioner would make some motion which seemed simple enough under our Chancery rules and practice, but would be met with a discussion from the Bench of the origin of the rule; and in disposing of the matter the complete and early history of the rule in the English practice would be invoked to justify his decision.

He had, as I have indicated, a high idea of the dignity of his office and he quietly insisted upon the proper display of respect for it. I recall an occasion when I quite unintentionally offended him. In the course of an argument in an important matter, while my adversary

was on his feet, he was interrupted by a remark of the Vice Chancellor which impressed me as a more formidable objection to the granting of the relief I desired than any argument my opponent had made. In replying, I endeavored to meet the Court's suggestion, which I quite innocently characterized as "ingenious." He immediately blushed deeply, rapped on the desk with his gavel, and rebuked me for so characterizing his idea, attaching to the word a meaning I had never dreamt of. I had really felt the pinch of his suggestion, and was impressed only with its danger, and meant to admit its force and applicability.

On the whole, as I look back, I consider Vice Chancellor Emery one of the ablest of our equity Judges. He had intellect, industry, judicial pride and character; and I was glad to hear Vice Chancellor Berry in a recent speech he made at a banquet in his own honor express very much the same idea.

Vice Chancellor Garrison

Vice Chancellor Lindley M. Garrison was a younger brother of Justice Charles G. Garrison, and started to practice in Camden where he soon established a good business, and was regarded as a leader of the junior Bar. He was possessed of supreme self-confidence, and his mind worked very quickly. I was often opposed to him both when he was still in Camden, and also after the removal of his office to Jersey City, where he formed a partnership with the late Frank P. McDermott, and John M. Enright. I remember very well a criminal case in Cape May County against Logan M. Bullitt, a lawyer of Philadelphia, which Garrison was employed specially to prosecute, and I to defend. The indictment

was for atrocious assault and battery. A man named Taylor, who had formerly been in Bullitt's employ as manager of an electric light plant at Cape May, and who possessed considerable political influence in Cape May County, had, while managing the light company, quarreled with Mr. Bullitt, its President. The latter discharged Taylor, and directed him to remove his desk and other belongings from the Company's office, which Taylor refused to do. Thereupon Bullitt hired two brawny negroes to remove Taylor's effects from the office to the sidewalk, which they thereupon did, making Taylor very mad. A fracas ensued between Taylor and his henchmen and the colored men. Bullitt was not even present, but his indictment followed, and Bullitt, who was a friend and client of mine, requested me to defend him. We both realized that Taylor's political influence would make a trial hazardous, but neither Bullitt, who was a good lawyer, nor I could understand where the criminality came in. The case was heard by County Judge Douglas of Cape May, and a jury who looked with complacency upon Taylor as he sat there, and threateningly upon Bullitt, at my side. The facts, somewhat as outlined, were proven, and my motion for a direction was denied by Judge Douglas. I then opened for the defense, and with great detail told the whole story, how Taylor, Bullitt's employee, utterly refused to obey orders, and so was discharged; how after his refusal to surrender possession and remove his desk and papers—a sort of "sit down strike"—his President and superior officer had directed the removal of his effects. I made the opening as strong as I knew how, trusting that I would be able to prove the facts I detailed. Fortunately, the stenographer took

down my opening. After I had finished, Garrison said in his cocksure way, to my amazement, "If that is your defense, I will admit every word of it." I asked, "You *will* admit the truth of everything I have said?" He replied, "Certainly!" I then added a few more facts along the same line, and had the sense to rest my defense without calling a witness. I immediately summed up for the defense, repeating, so far as I could recall them, the facts detailed and admitted to be true in my opening. I had prepared elaborate requests along the line that Taylor's remedy, if any, was a civil suit, and that there was no evidence warranting a criminal prosecution. These I handed to Judge Douglas and Court was adjourned for the day, after Garrison had also furnished him with his requests, which were the very antipodes of mine. I was naturally interested to see what attitude the Judge would take in his charge. Next morning he ascended the Bench and said to the jury that he had determined to say nothing about the facts because they had been very thoroughly reviewed by counsel on each side. He then turned to our respective requests, which, as I have already indicated, were as different as black is from white, and expressed diametrically opposite views of the law applicable to the situation. As he finished reading each of mine to the jury he said, "I so charge." He then took up Garrison's requests seriatim and as each was read he added, "I so charge." The poor jury being thus confused, followed their predilections and promptly found the defendant guilty. There was, of course, nothing else for me to do (as all my requests had been charged) but to except to the Court's adoption of Garrison's requests. I promptly sued out a writ of error, and fortunately the Supreme Court (64 N.J.

Law 379) reversed the judgment. In my long practice this is the only time I have heard of a judge performing in that manner. I really believe he had not the least idea what it was all about!

I think I can properly claim to have been the first one to suggest to Chancellor Magie that he appoint Garrison a Vice Chancellor, to fill the vacancy caused by the transfer of Vice Chancellor Reed to the Supreme Court, and I have always felt proud of my connection with his selection. He was a very able judge, commanding the respect of Bench and Bar alike. He wrote careful opinions, adopting the practice of dividing them into subjects, with headings for each, very much as Vice Chancellor Berry now does.

One day early in the year 1913 on the train coming from Washington I met Mr. Tumulty, President Woodrow Wilson's private secretary, who told me how Garrison happened to be appointed Secretary of War. He said that while President Wilson was still Governor (Tumulty was also then his secretary) the Governor, tired by the task of selecting the members of his Presidential cabinet, said to him, "Joe, I want you to find me a Secretary of War!" Tumulty then went to his home in Jersey City, took up a directory of the Bar of New Jersey, and, reading down the list alphabetically, came to Lindley M. Garrison and said to himself, "There's the man." Returning next day to Trenton, he said to Governor Wilson, "Well, I have a Secretary of War for you." "Who?" asked Wilson, and when Tumulty mentioned Garrison's name the President-elect said, "Who on earth is he?" apparently never having heard of him. Wilson, after being assured of Garrison's distinction both as a lawyer, judge and Democrat, immedi-

ately instructed Tumulty to invite Colonel House to meet Garrison at luncheon, and said that if House was satisfied, he would appoint him.

After Garrison's resignation from the Wilson Cabinet he joined the prominent New York law firm of Hornblower, Miller and Potter, and Mr. Miller of that firm gave a series of dinners to members of the New York Bar to give them and Garrison an opportunity to meet one another. I attended one of those dinners at the Metropolitan Club in New York. There were about fifty guests, including Senator O'Gorman, Morgan J. O'Brien, John B. Stanchfield, ex-Governor Miller and others I do not now recall. I was quite unexpectedly called upon by our host to make a little speech, as I came from Garrison's State of New Jersey, and was a friend of his. Miller and other speakers had been most laudatory of the guest, Miller saying that Mr. Hornblower had remarked, after arguing a case before Vice Chancellor Garrison in New Jersey, "There's the man I want for our firm!" and so when the opportunity presented itself, a place was offered him. Garrison stood it all very well, and I had a little fun in telling the Tumulty story as just recounted, much to Garrison's amusement, for he had a keen sense of humor.

But he was inclined at times to be somewhat didactic. Some little time after these dinners, John M. Enright, his former partner, retained Garrison to assist him in a case before the late Vice Chancellor Foster. I was on the other side with the late Frank Durand, the then able head of the Asbury Park firm of Durand, Ivins & Carton. As soon as the hearing started, Garrison took command, and ignoring the Court, instructed his ad-

versaries and the Court how to try the case, telling us categorically, when one of our witnesses was finished, to "call your next." I received several winks of the eye from Vice Chancellor Foster. Garrison did not win the case.

While he was still on the Bench, I was trying a case before him in Jersey City, with Gilbert Collins on the other side, and one had to be very alert when Collins was one's adversary. Collins asked his witness a question which seemed to me objectionable, and I objected as quickly as I could. The Vice Chancellor rapped on the desk and said to me "What are you doing, Sir, interrupting the proceedings?" I arose and said, "I am objecting to what I believe is an improper question." He replied, "If that is what you are doing, you should arise and address the Court." I apologized with the remark that some of us had gotten into bad court manners under Judge Depue!

Vice Chancellor Backes

The recent death (in 1935) of Vice Chancellor Backes brought to a close a career that was known to and appreciated by every lawyer of the State, so that it would be superfluous for me to do more in a short allusion to him than to recall his prevailing characteristics.

He was born in 1863, admitted to the Bar in 1884, became a Vice Chancellor in 1913, and having served faithfully, unremittingly and with the greatest distinction on our Equity Bench for twenty-two years, died after a brief illness, beloved by all who really knew him.

During the twenty-nine years of his practice, he attained a leading position at the Bar, his reputation ex-

tending far beyond the limits of Mercer County where he practiced. He was fifty years old when his old friend and competitor at the Bar, Chancellor Walker, appointed him Vice Chancellor; young enough to have the enthusiasm and energy of youth and yet old enough to have had a background of practice and of dealing with men, that enabled him in the discharge of his duties to manifest the very best of judgment. It is said that he filed over one thousand opinions during the twenty-two years he was a Vice Chancellor, and that at least six hundred of them are reported. I have no statistics about the treatment of his views by the Court of Errors, but I think most of the Bar felt as I always felt: very strongly buttressed in my arguments in the Court of Errors and Appeals whenever I had a supporting opinion by Vice Chancellor Backes. He became easily the outstanding member of our Court of Chancery. Vice Chancellor Berry, in the memorial address delivered by him at a meeting of the Bar held shortly after the death of Vice Chancellor Backes, the proceedings of which are reported in 118 Equity, spoke truly when he said: "Vice Chancellor Backes had no peer in the judiciary of this State."

Fourteen of his twenty-two years of service on the Bench were spent in Newark. This vicinage, having not only Hudson and Essex Counties to draw on, but a very large part of the business of the Court that comes from New York, gave a broader field for the display of the Vice Chancellor's capacity than did Trenton, and he was quite equal to the task. He possessed great administrative ability, and on motion days would dispose promptly and satisfactorily of an enormous amount of business. He was a careful listener during

the hearing of a case, seldom took notes, and decided his cases with great promptitude. He developed a style in his opinions that is unique. I think he must have written his opinions in longhand, for they show the most exquisite taste both in the selection of words and in the compression of sentences. His industry was unsurpassed. He was accustomed for several years to spend his summers at the Traymore in Atlantic City, and he once told me that he was so busy one summer that he was not once on the boardwalk. He always seemed to be at work. A few years before his death he spent a week-end at Rumson in the house of a neighbor of mine. I had occasion to call on him there on a beautiful Saturday afternoon and was told by the maid that he was upstairs. He came down, greeting me cordially, but had in his hands some legal papers, indicating that he was hard at work upstairs. He took little or no exercise, and was an inveterate smoker. Perhaps it would have been better for him had he increased the one and minimized the other. When he left Newark, wearied by the daily journey to and from Trenton, the Bar of Essex County united in a farewell gathering to express their appreciation of him. I was unable to attend that meeting, but took occasion to write him a letter expressive of my regret that he was leaving us, and of my affection for him. I cherish among my possessions a beautiful letter he sent me in reply, in which he recalled the fact, which I had utterly forgotten, that twenty-two years before, when he ascended the Bench in Trenton, I had had a pleasing talk with him, and assured him of my firm belief in his future success. He flattered me by saying he had never forgotten that

kindly interview. The Court of Chancery without Backes, is like the play without Hamlet.

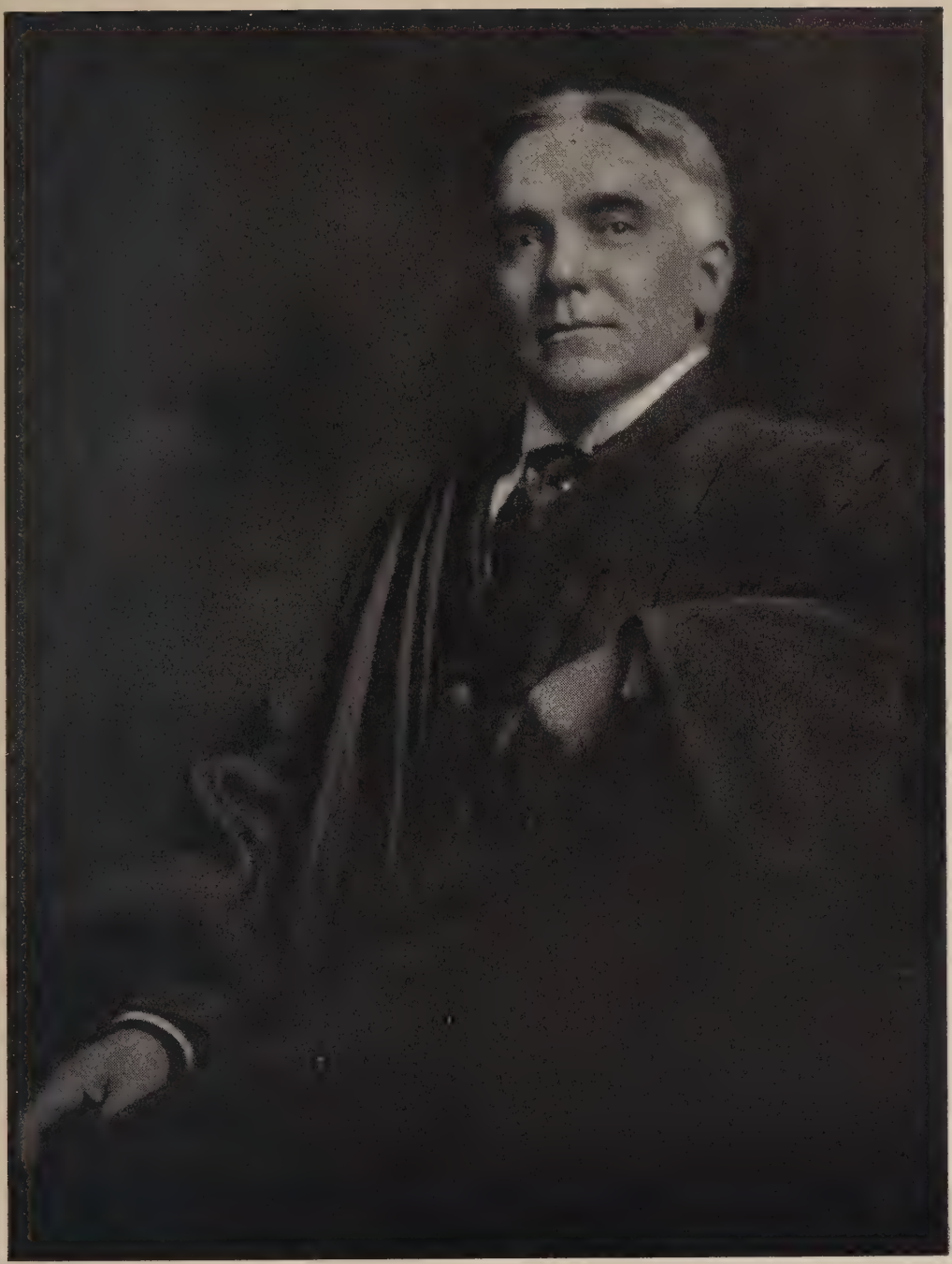
Justice Swayze

The memory of the character and ability of this remarkable man is still so verdant with us all, that I can add little to what is generally known about him. He was born at Newton, Sussex County, in 1861—two years later than I. I always felt a sort of relationship with him, because as a small boy he attended a school in that town conducted by my aunt, and he was considered an intellectual prodigy. He entered Harvard College so young that he was graduated first in his class, after a full course, at eighteen. He studied law in Newton, and was admitted to the Bar in June, 1882, at the same time that Justice Pitney and many other men were admitted who subsequently became distinguished. After practicing in Newton for a few years, he, like many other Sussex County lawyers, found the field too circumscribed, and moved to Newark, where he practiced for several years, following a procession of distinguished men that included Thomas N. McCarter, Sr., Joseph Coult, James E. Howell (later Vice Chancellor), Ludlow McCarter and others. A Sussex County paper once remarked that all the young men of Sussex County were deserting the County and going to Newark, either to drive street cars, or to practice law! After practicing alone for awhile, Swayze formed a partnership with the late Edward M. Colie, with whom he was associated until his ascent to the Bench.

His ability and character were so marked that he was made a Circuit Court Judge in Essex County to succeed Francis Child, who had served for years in that

capacity with entire satisfaction and great ability. Judge Child did not receive his failure of reappointment with his usual grace. I remember seeing him, shortly after Judge Swayze commenced to try cases at Newark, sitting within the bar to watch the proceedings, and whenever the new young judge would make a ruling, Judge Child would manifest his disapproval and apparent disgust with an audible sigh, which, of course, Swayze completely ignored. Swayze so distinguished himself as a Circuit Judge that after a period of only about three years he was promoted to the Supreme Court, where he remained until by reason of bad health he was compelled to retire, in 1924. His manner and habits were most judicial. He had a Websterian brow, and during the long term he served as a Supreme Court Justice, he was acknowledged to be one of the most able and most satisfactory members of the Court.

The official state reports published at the time he was a member of that Court are replete with learned opinions of his, some of them being remarkable, but I have never been able to escape the feeling that many of these opinions lack something that goes to make up a great judicial deliverance. One of them, *Neilson v. Russell* 76 N.J. Law 655—a pioneer decision in the law governing inheritance and succession taxes—I could never understand. If his opinions had been widely studied, I believe there would have been felt to be something lacking in them that would perhaps have somewhat reduced the high reputation he enjoyed as a result of his great integrity, judicial character and demeanor, and highly satisfactory method of dispensing justice. He had a most laudable ambition to become a member of the Supreme Court of the United States;



Francis J. Swayze

and many of his friends, including myself and some persons credited with influence, were very anxious that his ambition should be gratified. There was a rumor that President Taft requested the Department of Justice to examine Swayze's opinions as published, and I have sometimes surmised that a stranger to him, whose horizon was bounded merely by a study of Swayze's judicial opinions, would gain an inadequate view of his ability.

He presided at first in the southern tier of counties, and later went to Hudson County, whose troubled waters he managed to subdue. The new Court House in that county had been completed, and was a beautiful structure. Several persons in Jersey City, frightened at the expense, initiated under the statute an investigation of the cost and manner of its erection, and the application for the appointment of a commissioner to preside at the investigation came on for hearing before Judge Swayze. I was asked to serve as counsel for the investigators, and it was obvious at the first meeting before Judge Swayze that he was not in sympathy with it. He suggested two or three names, any one of whom he would appoint to conduct the investigation. The committee of citizens felt it would be a mistake to have any of them selected; and finally the Judge—in something of a huff, I thought—said he would conduct the investigation himself, and this he did, in hot weather and with the greatest patience. It lasted several weeks and created considerable interest. When it was finished the committee asked me, as counsel, for an opinion as to whether the investigation had shown facts that merited a presentation of the evidence to the grand jury. After a careful reading of the bulky

evidence, I advised, in a written opinion, that, in my view, certain individuals had been shown guilty of a conspiracy to mulct the county. This opinion was published by the committee in a Jersey City paper, and Judge Swayze manifested great indignation thereat. He called the grand jury in special session supposedly to lay before them the matters referred to in my opinion for their consideration. To the surprise of the committee and myself, he ignored all that, and directed the grand jury's attention to what he called the gross impropriety of the publication of my opinion. The matters disclosed by the evidence at the investigation were, however, laid before the grand jury, and indictments followed against two or three persons, including the architect of the building and one or two of the contractors. I was selected, presumably because of my familiarity with the voluminous facts, to prosecute the indictment. To my surprise, the very adroit and able counsel for the defendants—among whom were William D. Edwards and Merritt Lane—announced the willingness of their clients to waive a jury trial and be tried by the Court in Special Sessions. This announcement was followed by the information that Judge Swayze and the two Judges of the Court of Common Pleas—Judge Blair and Judge Carey—would sit in Special Sessions to try the case. The weather was intensely hot. The trial lasted several weeks, and I shall never forget the resigned air with which the judges, sitting in the jury box because it was a cooler spot than the Bench, and wearing their black gowns with very few clothes thereunder, fanned themselves and listened to the evidence with, shall I say, toleration! After the case was finished and the summation had

taken place, the Court immediately retired and in a short time delivered a written judgment of acquittal.

Meantime another vacancy had occurred in the Supreme Court of the United States and again Swayze's friends got busy, urging President Taft to appoint him to that vacancy, the Third Circuit at that time being unrepresented in the Supreme Court. I received a telephone call one evening about seven o'clock at my house in Newark from Governor Murphy, stating that he and Judge Swayze would be glad if I would come to his house. I immediately went over and found them in close conversation over a proposition that Governor Murphy said President Taft had made to him, which was to appoint Swayze a Judge of the Circuit Court of Appeals for the Third Circuit; indicating, if not directly stating, that it would be quite natural, in the event of another vacancy in the Supreme Court, for the President to select Judge Swayze for that place. Knowing my interest in Judge Swayze's appointment to the Supreme Court, they had sent for me to get my views on the policy of having the suggestion of President Taft adopted. It took me but a moment to urge its rejection. I told them that Swayze was already one of the best lawyers in our highest state court; that he, owning his residence in Newark, was readily accessible to that field of duty. If this offer were accepted, he would have to spend a large part of his time in Philadelphia, and would be compelled to deal with many questions in the law of patents, admiralty and Federal criminal law, with all of which he was utterly unfamiliar; that he would have to work very hard, and he might not make a success. I added that I could not escape the conviction that if that position were accepted by him,

President Taft would be very apt thereafter to take the position that he had been given one job and ought to be satisfied with it. I could see that Governor Murphy was disappointed, and that Swayze accepted my views with some hesitation. I left the interview, and was never told by either of them when they reached the conclusion to reject the proposition.

Meantime Governor Murphy, who was a great friend of President Taft, invited the President to lunch with him on Washington's Birthday at his beautiful residence on Broad Street in Newark, and go later to Orange to make an address. I was among some fifty guests who attended that luncheon. At the table for the élite with Governor Murphy sat President Taft, and Mahlon Pitney, then the Chancellor of New Jersey and its ranking State Judge, sat on his right. Down the line at the same table sat Swayze. Those of us lesser ones who sat at the other tables became intensely interested at the intimate manner in which President Taft and Pitney were talking, apparently oblivious to what was going on, and I am quite sure I observed Swayze's glances in their direction. I heard afterwards that in the automobile going to meet the later engagement, President Taft suddenly said to Governor Murphy, "Tell me about this man Pitney. I am so impressed with him that I am going to make him a Judge of the Supreme Court of the United States!" whereupon Mr. Murphy tried to dissuade him from that conclusion, still urging Swayze. It was not a long time afterwards that, as Pitney told me, he was playing golf at Seaview, near Atlantic City, and was very much annoyed by having a messenger from the Club House run out on the course and tell him he was wanted on the telephone.

Supposing that it was somebody who wanted an injunction, Pitney interrupted his game with great regret to go to the telephone, and was completely flabbergasted when a gentleman at the other end of the telephone, in Washington, said, "Your name has just been sent into the Senate as a Justice of the Supreme Court!"

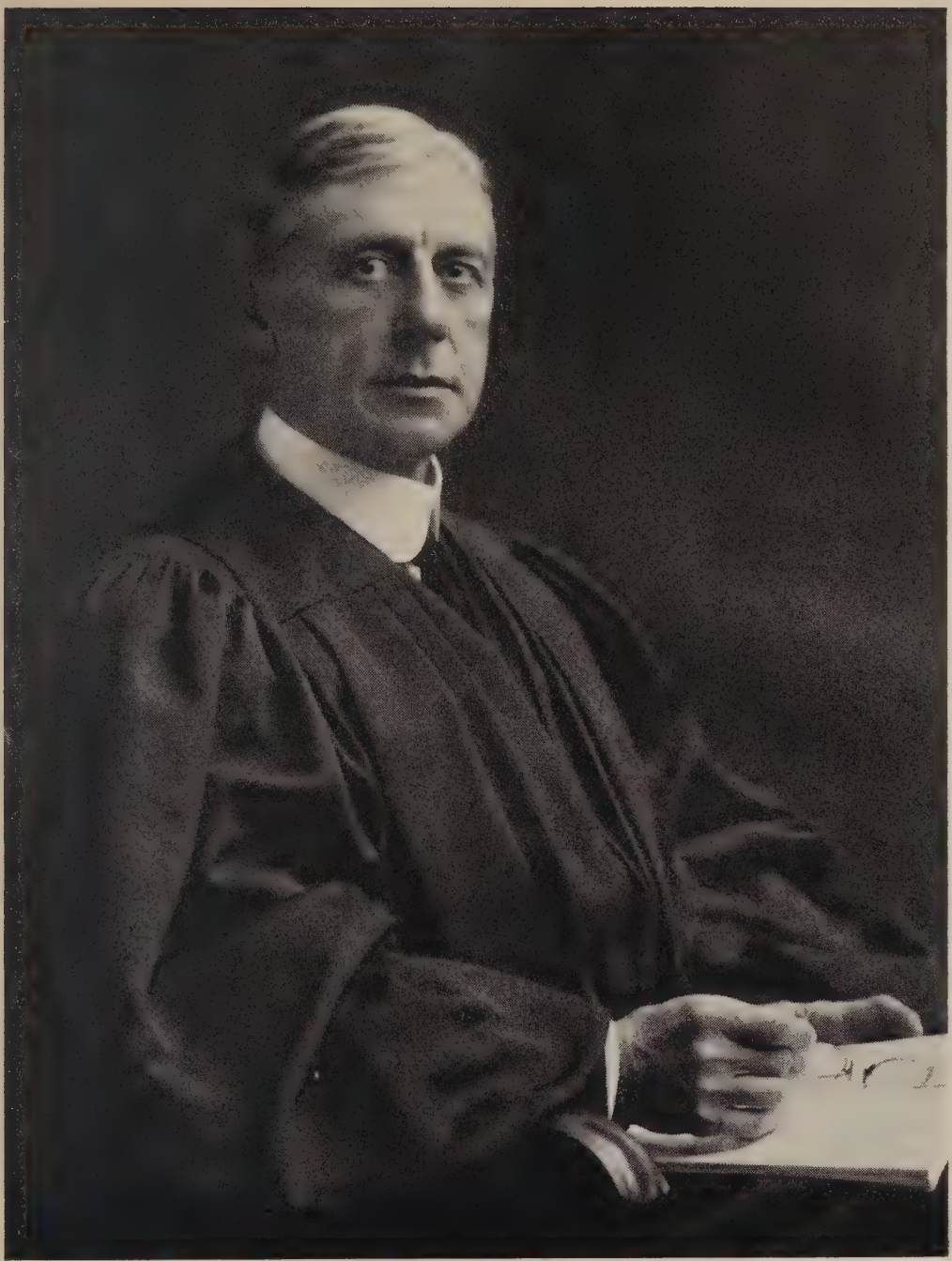
Much as we all admired Chancellor Pitney and welcomed the selection of a Jerseyman to that high office, many, including myself, felt disappointed. If Swayze felt so, he never showed it, but pursued his work in New Jersey with his usual zeal. Some months afterwards, he happened to be driving from the station in Newark in my carriage with me, and I took occasion to tell him just how I felt about the situation. He put his hand on my knee and said of course he had been greatly disappointed, but that if he wasn't to have the honor, he would much rather that Mahlon have it than anybody else. As indicated on an earlier page, I believe that it was a sore disappointment to him, and that he really never recovered from it. Several years afterwards he became afflicted with some curious and unusual disease, known as Parkinson's Disease, and I heard him once laughingly say that he thought it was rather tough that if he had to become sick he should have a disease with such a horrible name.

To anyone who may be interested I can recommend a reading of the appreciative and scholarly address delivered by the late Edward M. Colie before the Court of Errors and Appeals upon the presentation to the State of a portrait of Judge Swayze, in the presence of the Governor, the full Court, and a large delegation of the Bar. It will be found in 99 N.J. Law.

Justice Mahlon Pitney

I became acquainted with Mahlon Pitney in my Freshman year at Princeton. We were both members of the Class of 1879, which had in its membership a number of persons who afterwards acquired considerable prominence. He belonged to the same eating club with me, and the shrewdness and ability so fully manifested in his after life soon became recognized by all his classmates who knew him well. He stood very high in a class of high scholarship, but he rather affected to appear not to do much studying, although it was commonly rumored that after everybody else had gone to bed, Pitney would burn the midnight oil.

After graduation, he studied law with his father at Morristown and upon his admission opened an office at Dover, in Morris County, where he had all the accoutrements of a modern law office, including a good-looking typist! He at once became conspicuous in a country practice. I recall being against him in a case before Vice Chancellor Van Fleet in which the dispute was between the mortgagee of a factory and the receiver of a corporation that owned the factory, the question being as to whether the mortgage covered certain machinery. I insisted that it went to the receiver, whose counsel I was; and Mahlon manifested an amazing familiarity with mechanical engineering, and displayed in that early case his great ability. There was manifested at the same time another characteristic, which lasted, I think, throughout his life, namely, a tendency to bother himself with unnecessary detail. Some testimony had been taken before Walter J. Knight, the most competent official stenographer of Vice Chan-



Mahlon Pitney

cellor Van Fleet, and for economy's sake it was agreed that but one copy—the Court's—should be transcribed, and that each counsel would have an opportunity to prepare his argument of the case from this copy, and then send their briefs with the same copy to the Vice Chancellor. I received the book of evidence in typewriting from Pitney, and he wrote me a letter of indignation at what he said was the careless way in which the evidence had been transcribed. He added that he had sat up all night making necessary corrections, which were obvious, and was inclined to greatly criticize the stenographer. Upon examining the book, I found many lead-pencil alterations upon most unimportant matters, such as the omission by the typist of the final "e" in the word "the"—obvious evidence of carelessness, but in no way affecting the sense.

Accompanying this zeal for work was a great fondness for social life, and he used to go to all the society entertainments in Newark, and was a most beautiful dancer. I was told on good authority that he had a suit of oiled silk which he wore under his evening dress, so that he might dance *ad libitum*. The aggravating fact about Pitney was, that whatever he did, he did well. He was a splendid golf player, and very fond of it. He played chess well, and had a miniature set which he would use on the train, enroute to Trenton from Morristown. He soon interested himself in politics, was sent to Congress, and later became a conspicuous member of the New Jersey State Senate, and was recognized as a prominent political figure in this State. A vacancy occurred in the Supreme Court of New Jersey, and he was made Associate Justice, in which office he showed at once his ability and industry by writing most elaborate

opinions, Depue-like in their breadth of grasp and repleteness of citations. He then became Chancellor, and I recall with the greatest interest, in that connection, attending a dinner in his honor at the residence in Morristown of his brother J. O. H. Pitney, of Pitney, Hardin & Skinner. There were a dozen or so present, all Mahlon's friends, besides his proud father; and after dinner we all sat around and listened to Henry C. Pitney's most amusing description of his own early career at the Bar in Morris County, with more particular reference to a celebrated criminal case in which Asa Whitehead and several of the then leaders of the Bar participated. Mr. Pitney, winking his one uncovered eye at us, said "I was in the case to look after the jury"—whatever that meant!

I have already described the luncheon to President Taft at Governor Murphy's on a Washington's Birthday. After Pitney's nomination as a Justice of the Supreme Court, the Bar and Bench of New Jersey united in a banquet in his honor, which was held at the old Waldorf-Astoria in New York, at which I presided. It was a very successful affair. Justice Hughes, then an Associate Justice of the Supreme Court, came from Washington and made a characteristically able address; and Mahlon soon became an industrious member of that distinguished tribunal. I had occasion to appear before him, with some other New Jersey lawyers, at his chambers in the Capitol, formerly occupied by Justice Harlan, and I noticed at the end of a long table in the anteroom an apparatus for heating dishes. I asked his secretary about that, and he said that every night, except Saturday and Sunday, Justice Pitney worked until nearly midnight in this room, and that

he took his dinner, which was brought in and kept warm on that heater, entirely alone. His industry was indefatigable. His brother John told me that one summer when John and his family were at Watch Hill, Rhode Island, he had invited Mahlon to come and spend a month with him, and he had waited for three full weeks beyond the appointed time for Mahlon to arrive. Finally he came, looking all worn out, and stating that he had been hard at work in hot Washington preparing a dissenting opinion, a copy of which he produced from his pocket and handed to his brother. John said he looked at this opinion, and then looked at the tired-out Mahlon and said, "Mah, do you know what I would do if I had my way with that opinion? I would throw it in the ocean!" This was, perhaps, another example of unnecessary labor.

I am reminded of another story told me by his brother John, who had a keen sense of humor—much stronger than Mahlon's. Shortly after Mahlon began to sit in the Supreme Court of the United States, John was visiting him in Washington, and naturally desired to see Mahlon sitting on the Bench. When he went into the Courtroom a tall lanky lawyer from Kentucky was arguing a case and apparently having some trouble with the Court, particularly with Justice Pitney. John sat next to a lady, who sat on the edge of her chair and was apparently intensely interested in the proceedings. Finally, not being able to hold in any longer, the lady turned to Mr. John Pitney, who was, of course a perfect stranger to her, and said "Do you know who that gentleman is who is arguing so well?" and John admitted he did not. She then said, with manifest pride, "That is my husband!" whereupon John replied: "Do

you know who the judge is who is giving your husband Hell?" She said "No," and he said: "That is my brother."

After a few years on the Bench, Pitney's health gave out and he was compelled to retire. He died, all too soon, a short time thereafter.

Justice James J. Bergen

I have already had occasion to refer herein to Justice Bergen. Before he went on the Bench, he and I were concerned together in an important case in the Federal Court in Trenton, and we spent our nights in Trenton. One afternoon after Court adjourned, he suggested that before getting down to work, we go down to the State prison. He had become well acquainted with the Keeper, when Bergen was Speaker of the House of Assembly, and I was glad to accept under these auspicious circumstances. The Keeper was in, and took us in personal charge, and just as we were about to leave, after a thorough inspection, he suggested we wait in the corridor to hear the evening hymn. Just about that time a prisoner in uniform rolled in a melodeon and sat down to play. About a dozen fellow prisoners then formed a semi-circle around him and, with the Keeper, Bergen and myself as apparently sole auditors, the choir commenced to sing an evening hymn. I was very much impressed with the apparent religious zeal and enthusiasm with which a short man at the end of the crescent was singing the lines "Jesus, lover of my soul, let me to thy bosom fly," and I turned to the Keeper asking who that apparently devout prisoner was. He replied, "He is a Jersey City ballot-box stuffer!"

Bergen's work, both as Vice Chancellor and Supreme Court Justice, was really very remarkable. He was prompt, apparently had a true legal intuition, and acquired the confidence of both litigants and counsel. His opinions are, in my judgment, noteworthy in that while there is no great display or parade of citations in them, they seem to possess an intuitive legal soundness all their own. He died in harness, with his assigned work finished, leaving behind the affection and respect of Bench and Bar alike.

Justice Willard P. Voorhees

I first became acquainted with Judge Voorhees when I was quite young at the Bar. I was employed by an organ manufacturer in Bloomfield to defend an action to recover on a promissory note for a considerable sum given by my client and held by a New York bank. It was my duty to prevent if possible the entry of a judgment against the defendant. He had strong hopes that if given time he would recover his financial prosperity, be enabled to pay his debts, and continue what had been a successful business. Suit was brought in the New Jersey Supreme Court. There was the necessary diversity of citizenship between the bank and the defendant, and I calculated that by removing the suit to the Federal Court I could gain about a year's time before judgment could be entered, and then, my attention having been directed to the fact that by a recent amendment the right to remove a case to the Federal Court was restricted to a non-resident defendant, I conceived the idea that further delay could be had by pointing out to the Court, if it had not already been observed, the irremovability of the case, owing to the

recent statute. I started out on my campaign. Voorhees represented the bank, and after about nine months' delay, the case came on for trial before Judge Wales of Delaware—to whom I have already alluded—at Trenton, without a jury. I made a number of points in favor of the defense to the action, all of which Voorhees pooh-poohed, and the judge seriously considered. Finally, after a delay of about three months, he sent for counsel and delivered a solemn judgment in favor of the plaintiff. Carrying out my program, I then arose and said to the Court that apparently he really had no jurisdiction, because the case had been improperly removed, for the reasons above indicated. Neither Voorhees nor the judge knew of the amendment to the removal act, and Voorhees again pooh-poohed my contention, arguing that as I had removed the case, it didn't lie in my power to say that the removal was improper. The learned judge manifested the greatest interest in the question, which he said was quite novel, and remarked that he would have to give it due consideration. He returned to Delaware and after several weeks filed an opinion granting my motion to remand the case, upon the ground that the removal was improper, and that his Court had no jurisdiction; and so the defendant had another three months before the case could be reached in the State Court!

Voorhees never recovered from his chagrin and surprise at this procedure, and never failed to express his admiration for my tactics. We became warm friends, and for several winters he used to send to my family and me frost fish from the Raritan River in New Brunswick where he lived. As I look back upon that removal incident, I cannot say that I have any particular per-

sonal pride in it, but it formed the basis for a most nteresting and familiar relation between him and me, even after he ascended the Bench, where he modestly but successfully performed his duties.

A very accurate description of the character and capacity of Justice Voorhees is contained in an address by his rival at the Bar and his life-long friend, Alan H. Strong, delivered before the Court shortly after the death of Justice Voorhees. It is reported in 85 New Jersey Law. Although I recommend the reading of the entire address, I quote and endorse the following extract from it:

> "He was genial, warm hearted, generous, hospitable, considerate, ready and bright in conversation; widely informed on general subjects, a fine musician, a well rounded man and accomplished gentleman. His private life was exemplary. In every relation, public or private, he stood for all that was of good repute and just and true; for nothing that was unworthy."

Justice Samuel Kalisch

Sam Kalisch, as everyone who knew him well called him, had really a great career as counsel for plaintiffs in tort cases, and may be said, I think, to have largely created the law of negligence in New Jersey. He was equally effective in trial or on appeal, a most shrewd cross-examiner, knowing when to stop, and eliciting most valuable facts from an adversary witness by leading him along without brow-beating or bull-dozing, but by persuasion. He was most eloquent, and I recall with admiration an address I heard him deliver before an Essex County jury for a plaintiff, one of whose arms

had been burnt off through the alleged neglect of the Western Union Telegraph Company. There sat the plaintiff with her armless sleeve, and Kalisch brought tears to the eyes of the jury by making a contrast between the statue of the Venus de Milo in the Louvre in Paris, and this poor girl. The case was defended by Rush Taggart, one of the regular counsel in New York of the Western Union Telegraph Company. He had so much confidence in his claim that there was no cause of action against the defendant, that he offered no evidence whatever. Judge Child, who presided, took a different view of the law and sent the case to the jury, who promptly gave a verdict of $50,000. I happened to be in the Court of Appeals at Trenton when it was announced that that verdict was affirmed. I imagine that may have meant almost $25,000 to Kalisch personally! His face was flushed, but his principal satisfaction seemed to be derived from the fact that he had beaten Mr. Taggart on the law.

When he was appointed by Woodrow Wilson to the Supreme Court at the age of sixty, there was considerable skepticism, even among some of Kalisch's friends and admirers, as to whether his somewhat specialized line of experience would have qualified him satisfactorily to perform the varied duties of a judge of that great Court. They were all agreeably disappointed in their apprehensions. He was an immediate success. He had, in the first place, a broad culture. Then he was grounded in all the principles of the common law, civil as well as criminal; and I have never heard it seriously claimed that his demeanor or conduct on the Bench gave any manifestation of his leaning against corporate defendants, or in favor of the plaintiff in accident cases.

He made annual trips abroad. I met him in Paris in 1908, and he spent nearly a whole day showing my brother-in-law and me several most interesting features of that wonderful city, with which he was thoroughly familiar. One of these was the high wall that was supposed to have been surmounted by Jean Valjean in *Les Miserables*. He greatly admired the French and dressed like a Frenchman, generally wearing a silk hat and a frock coat adorned with a boutonniere.

I was counsel for the defendant, a doctor in Essex County, who was indicted for manslaughter, because a female patient upon whom he was operating died on the table, and an exhumation of her body and post mortem examination brought to light the fact that over twenty feet of her intestines had been removed from her abdomen before her burial. The case created the greatest interest and excitement, and was brought before Judge Martin, then a Judge of the Quarter Sessions in Essex County. The Courtroom was packed, and I was on my mettle, because if this man was convicted, it seemed to him and to me to mean the ruination of his professional career, which was then budding into one of great promise. He made a very poor witness. The nurse who was at the operation absolutely corroborated his statement that of course he had not removed the intestines. The jury, however, convicted him. He was sentenced to the penitentiary and to pay a fine. An application for a new trial was made with no success. I then took the case to the Supreme Court where the judgment was affirmed. We then went to the Court of Appeals, and affirmance there followed. The opinion of the Court of Appeals, affirming the conviction by a divided Court, was written by Judge Kalisch. The

morning after it was filed, I met him on the street. He stopped me and said while he had felt compelled to take the view expressed in the opinion, he would be the first to sign a petition to the Court of Pardons for the defendant's release. I gathered from that, that he believed there was something wrong about the conviction, although there had been nothing manifested that would justify the Court on legal review to set it aside. I was almost at my wit's end, but finally concluded that I would go to Trenton and tell Judge Kalisch that I was going to apply for a re-hearing, and to beg him, if he could see his way clear, to vote on my application in favor of it, for I felt I could convince the Court that the defendant was innocent, but I feared that unless he favored the application for a re-hearing it would undoubtedly be denied by the Court. I reminded him that I was not asking him in the event of a re-hearing to change his vote or views upon the main question: I simply asked for his cooperation in opening the door. He gave me no positive reply, but earnestly said, "You file your petition, and make it as strong as possible!" I did so, with the result that, quite out of the ordinary routine, the Court directed an oral argument upon the application, in which the State was entitled to participate. We had such an argument, at which the whole situation was discussed, and the re-hearing was then granted, the case re-argued, and the verdict set aside by a divided Court, Justice Kalisch still voting for an affirmance. My only reason for adverting to this incident is to emphasize how it displayed the manly and dispassionate side of Justice Kalisch. I never, of course, knew how he voted on the application,

but I have always surmised that he favored it, or it would not have been granted.

The client's reaction to the whole matter should here be mentioned. In due course the Court of Errors announced its decision, and of course I heard promptly of the reversal. I at once rang up my client, on whose behalf I had made such desperate efforts, and he replied nonchalantly, "Why yes, I have heard of it." He had not taken the trouble to communicate with me, and he never gave expression to any appreciation of the quite extraordinary efforts that had been made on his behalf.

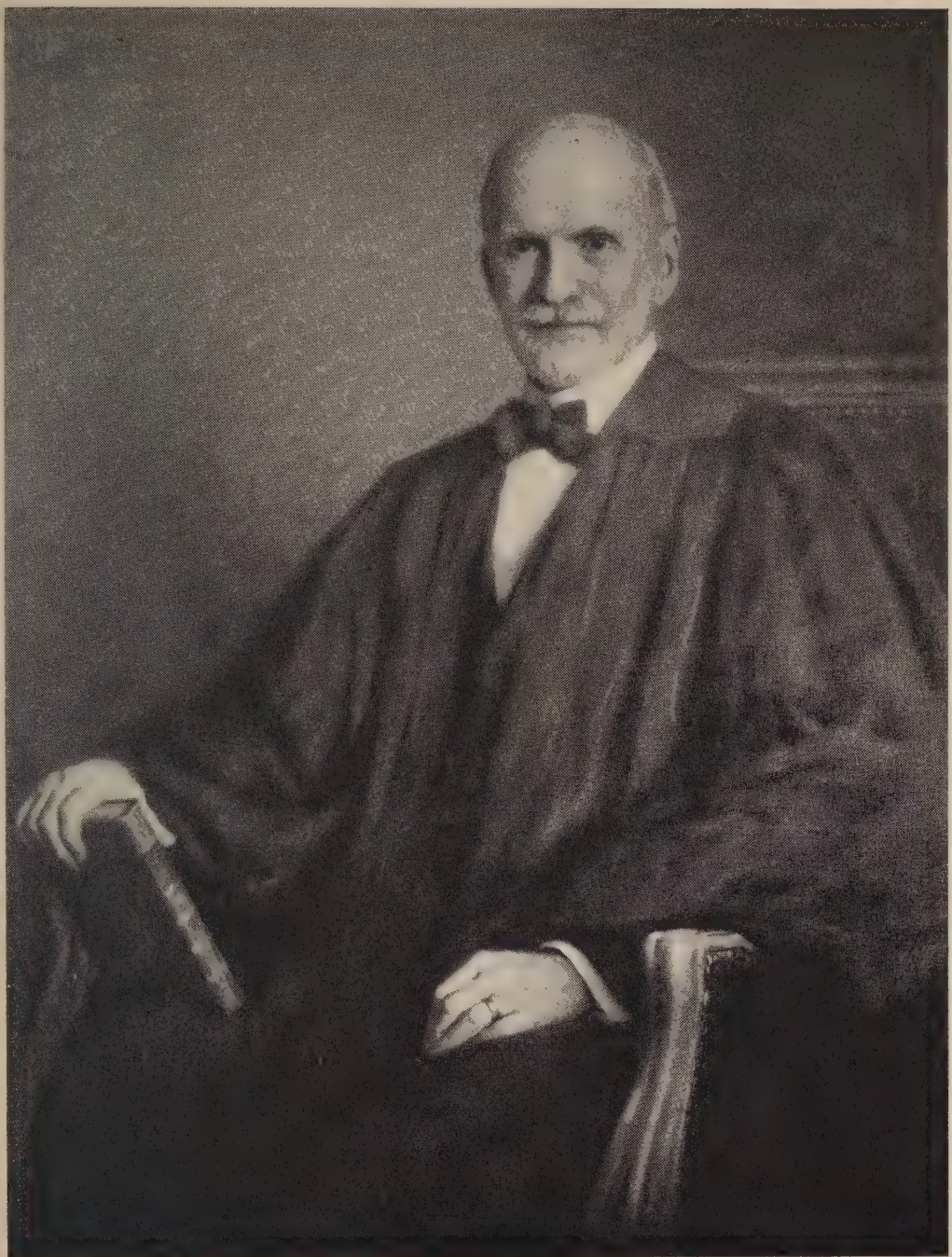
How differently people are constituted! I have in mind another criminal case tried in Essex County, where a husband was accused of immorality. His wife stood by him loyally, and after a hard trial, the jury late in the evening acquitted him. I was at home in bed at the time, but I learned afterwards from a faithful assistant that after the rendition of the verdict, the accused, his wife and the jury all adjourned to the Robert Treat Hotel and had a supper. The foreman of the jury, in proposing a toast, recommended to the defendant "Not to do it again!" This really was a considerable victory, the whole issue revolving around the age of the female complaining witness, and with the assistance of a clever investigator who visited Hudson in the State of New York, where this young girl had been born and brought up, I was able to throw enough confusion about the date of her birth to enable the case to be won. The husband and wife were both highly appreciative of my efforts, and after paying my bill and expressing their sincere thanks and appreciation, as the door of my own room was being opened for them

to go out, the loyal wife, who had stood by her husband throughout this ordeal with the greatest persistency, in his presence gave me a good round kiss to express her appreciation of what she believed I had done. The contrast between the actions of my clients in the two cases just referred to speaks for itself.

Chief Justice Gummere

William S. Gummere, for years an outstanding figure in our judicial history, has so recently died, and his career is so well known to all lawyers, that I will not undertake to do more than make a passing reference to the extraordinary ability he manifested through his long judicial career, in which he served so successfully as an Associate and then as Chief Justice of our Supreme Court.

My earliest recollection of him is as a partner in the firm of Parker & Gummere, in which he was junior to former Governor Joel Parker, who was his distant relative either by birth or marriage. They had offices in Newark. The firm soon dissolved, and for a short time Gummere had an office alone in the Liverpool and London and Globe Insurance Building in Newark. Shortly thereafter he became a partner of Oscar Keen, and the firm of Keen & Gummere continued for some time. Their offices were on the same floor as our own firm's, and I used frequently to go into Gummere's office, and can see him now sitting in a rocking chair in the center of his room with apparently no work to do, and thoroughly enjoying reading the Lives of the Lord Chief Justices of England. He did not seem to be very busy and his work at that time appeared largely to consist of the duties of a Master.



William S. Gummere

He had married a daughter of Chief Justice Beasley, a very talented and attractive woman, and lived on Camp Street in Newark. My father's residence at that time was on the corner of Broad and Camp Streets. Years afterwards when Gummere had found his niche and was the admiration and fear of all New Jersey lawyers, I gave a dinner at the University Club in New York to about fifty of my friends, laymen and lawyers, in New Jersey and New York. Among the guests the Chief Justice stood out. My brother Uzal H. McCarter, who never missed an opportunity to have some fun, made an after-dinner speech in which, turning to Gummere, he said, "Gummere, as a young man some of your friends did not predict your wonderful success. I used to hear my mother say, as you would turn slowly with your pigeon-toed walk, at about eleven o'clock in the morning, around Camp Street into Broad en route to your office, 'There goes Will Gummere. He never will amount to anything!' " The company enjoyed the story, as did Gummere. I may venture to recall a story I told at the same dinner, illustrative of the different attitude shown by the lawyers of New Jersey and New York toward one another. There were, as I have already said, several New York lawyers at the dinner, and I truthfully related an experience I had had in the trial of a case in which I was associated with my friend Henry Wollman in New York City. It was a beautiful spring day, and the Court took a recess for luncheon. My papers lay on the table as I started to go out to lunch. Wollman said to me, "Where are your papers?" I said, "I left them on the table." He said, "Don't do that; they (meaning our New York adversaries) will steal them!" Having safely put them in my bag, which

I had under my arm, I then took my hat and started with Wollman to lunch. He said, "Where is your coat?" I said, "Hanging on the rack." He said, "Take that along; they will steal that, too!" The New York lawyers didn't seem to enjoy the story, and Jersey for once had the laugh.

Chief Justice Gummere's brother-in-law, Edward T. Green, was made Judge of the District Court of the United States for the District of New Jersey. Gummere succeeded him as General Counsel in New Jersey of the Pennsylvania Railroad Company, moved to Trenton, and became a most zealous and efficient attorney for his client. Once, in order to illustrate how improper he thought it was for a lawyer to act as a witness in a case in which he was counsel, he told me that in order to prepare his defense to a case commenced by Lindabury against the Company for a crossing accident in Elizabeth, he had made a careful inspection of the *locus,* and a dispute arising in the course of the trial as to the location, he very foolishly had taken the stand and testified upon the subject. When Lindabury came to sum up the case, he took the position before the jury that Gummere's evidence was false, and while, of course, he resented the argument, he said that no power on earth could thereafter prevail upon him ever to be a witness in a case in which he was concerned as counsel.

At this stage of his career Gummere was a most charming and attractive person, as was also Mrs. Gummere. They were both friends of my family and I often had opportunity to be with them socially, and learned what a wonderful sense of humor they both possessed and manifested. I remember that at this time he wore

a full beard, and he told me with the greatest glee of an incident that had occurred one evening when Mrs. Gummere and he visited the *Eden Musée*, then a place of amusement in New York of some celebrity and popularity. In the hall leading up to the main room was a collection of wax work figures, something after Mrs. Jarley's wax works in London. Gummere, who had a most imperturbable countenance, assumed an attitude in this hall alongside of the wax work figures, with his wife off in one corner watching. Spectators, he said, came up to him, pushed him and pulled his beard, and exclaimed "He must be real!" He stood there with a perfectly blank expression, his wife thoroughly enjoying herself as a spectator. They were full of just such quirks as that, and while, of course, after his promotion to the Bench he did not engage in as many such pranks as he had when simply a private citizen, he nevertheless continued to enjoy life, possessing the greatest amount of *joie de vivre*, and was as good company as I ever met. He was very fond of shooting, and had a small shack somewhere in the South where he was accustomed to go once or twice a year to give vent to his sporting proclivities. He played an excellent game of golf, and I remember once pursuing him on a bicycle around the course near Point Pleasant, where he had a summer home, to get him to sign some paper, which he cheerfully and readily did.

Meantime, Mrs. Gummere's health failed, and he gradually withdrew from his social life. An injury to his leg required him to abandon both hunting and golf, and in the latter part of his life he spent practically all of his time at his work.

He was the most independent judge I ever knew. He

was so thoroughly honest and sure of his position that he quite audaciously would ignore what seemed to be the proprieties. He possessed a very quick mind, and as time wore on, he didn't hesitate, either on motions or at Trenton, frankly and somewhat roughly to express his entire dissent when he disagreed with the views that were being urged by counsel, and for some time before his death the entire Junior Bar was very much afraid of him. Curiously enough, he retained until the end a fondness for hearing and disposing of motions at the Essex Circuit, and he seemed thoroughly to enjoy Saturday mornings when he would spend an hour or two in hearing many mere practice motions which most of his associates would have left to Supreme Court Commissioners to hear and decide.

His opinions in the Supreme Court and Court of Errors were simple, but models of brevity and logic. He seldom cited authorities outside of our own State, and believed that New Jersey had evolved a system of jurisprudence that was almost, if not quite, complete. He was a great stickler for the old rules and practices, and I have heard more than one of his associates rather complain that the Chief did not realize that times had changed since the days of Chief Justice Beasley. In the last interview I had with him at his Chambers in the Essex County Court House, he told me with some feeling that his associates wanted to expedite the business of the Court of Errors and Appeals by dividing the Court into committees, an idea that he said he utterly disapproved of and believed to be unconstitutional. I believe, however, that he became before his death a reluctant convert to the practice that now obtains in that regard.

A good illustration of the somewhat narrow and contracted life he led at the close of his career is the fact that when at the request of the Bar he was to sit for his portrait in New York City, and Frank Bergen volunteered—years after the Holland Tunnel had been opened—to drive him to the artist's studio, the Chief Justice told him he had never been through the tunnel before. When he died, we lawyers all felt the bottom had been knocked out of things. I hope we were mistaken.

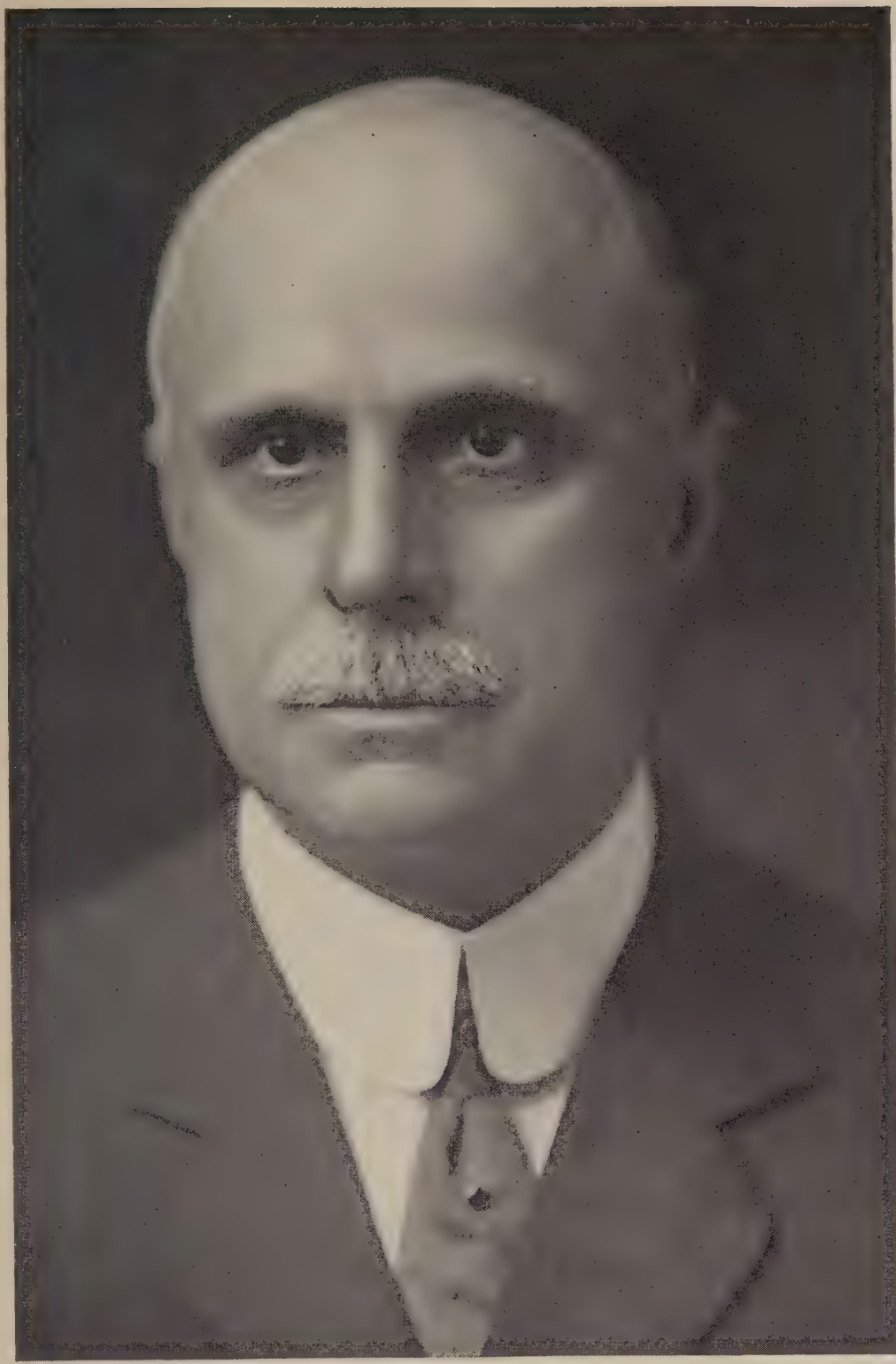
Vice Chancellor Leaming

Another of the judges of our high courts of whom I desire particularly to speak is Vice Chancellor Edmund B. Leaming. He commenced to practice, I believe, in Cape May County, and after a few years he went West, returned to New Jersey after a considerable absence, and at once took so prominent a part at the Bar in South Jersey that when Vice Chancellor Grey died he was appointed to the vacancy by Chancellor Magie, and at once captured the affection and admiration of the Bar that practiced before him for the able, courteous and satisfactory way in which he administered justice. He died in 1933 after a most honored career of twenty-six years on the Chancery Bench. A few months after his death a large meeting of the Judges of the Court of Errors and Appeals, the entire Chancery Bench, and lawyers from all over the State, as well as many laymen from South Jersey, was held in the Court House at Camden in his memory. The proceedings are described in 112 Equity, and accurately and without exaggeration describe his remarkable career. At that meeting, I gave some statistics with refer-

ence to his opinions. Perhaps I can properly quote therefrom:

> "No cold statistics can do justice to the simple, authoritative and convincing character of his opinions, but it is interesting to note that the Court of Errors and Appeals affirmed the decision contained in the first opinion filed by him, and thereby thus early manifested their respect for, and belief in, the correctness of his views. An examination discloses that approximately five sixths of his opinions, from which appeals were taken, were affirmed. The last opinion rendered by him as Vice-Chancellor that was reversed was in 1916, and the last twenty-four opinions that he rendered, from which appeals were taken, were all affirmed. In all, our reports contain four hundred and twenty-four opinions of his, of which fourteen were rendered while sitting as Vice-Ordinary. This remarkable showing is a great tribute to the Vice-Chancellor. He seemed to possess an equitable intuition. His demeanor on the Bench was admirable, and it is only perhaps now that he has gone, and we dwell upon the quiet, unobtrusive, but effective manner in which he administered justice, that we can in an inadequate manner express our admiration and affection for him."

I remember well the last time I saw him, which was a few months before his death. He learned that I was trying a case in Camden, and sent a messenger asking me to call on him if I found time. Of course I did so, and had a charming half hour with him. He had not long before undergone a serious operation, from which he believed he had entirely recovered. He was in good



Edmund B. Leaming

spirits, apparently perfectly well, and jokingly spoke of his inordinately large appetite which, to some extent, he attributed to the nature of the surgical operation he had undergone. We shook hands affectionately when I left. I little dreamt I would never see him again.

Some Other Judges

There were, of course, many other judges whom I knew, and of whom I might well speak, but I must draw this section to a close. Among those whom I shall briefly touch on, however, was Vice Chancellor Stevenson, who besides being a most scholarly and able judge, was very fond of a good dinner! I was trying a case in Paterson before Justice Bergen, when my friend Judge Francis Scott told me that Vice Chancellor Stevenson wanted Justice Bergen and me to dine with him that evening. Upon reaching his house I found that besides Justice Bergen, Judge Scott and myself, the only other guest was Vice Chancellor Lewis, and we sat down to a most luscious dinner—terrapin, ducks and red wine tempered to the proper degree of warmth—and had a charming evening. It was interesting to me to see this highly intellectual man, who clearly was wrapped up in his work, so fond of, and such an adept in, a good *cuisine*. During that evening I asked the Vice Chancellor if he had ever had any ambition to be a member of the Court of Errors and Appeals. He replied strongly in the negative, stating that he thought the greatest pleasure derivable from a judicial life was administering justice directly to litigants who personally appeared before the judge; that there were comparatively few appeals from his decisions, and he had derived the

greatest satisfaction from observing the apparent contentment with which litigants, both successful and unsuccessful, left his room when the case was ended.

Nor can I refrain from speaking of my lifelong friend Judge Andrew Kirkpatrick, the grandson of Chief Justice Kirkpatrick, whom Judge Frederic Adams, while alluding in an after-dinner speech to the somewhat profane habit of the grandson, described as the *precursor* of the younger Andrew! He studied law in the office of Mr. Frederick T. Frelinghuysen, who was then in active practice in Newark and later United States Senator and Secretary of State of the United States. He told me that Mr. Frelinghuysen, who was a clever trial lawyer, used to write out his jury speeches. He formed a partnership with a former Judge of the Court of Common Pleas of Essex County, Frederick H. Teese, and someone was wicked enough to say that the partnership was dissolved because neither of the partners could stand the profanity of the other. He then became Judge of the Court of Common Pleas in Essex County, when the lay judges still survived, and I remember an incident when a messenger from Thomas S. Henry's office presented to the Court a blank order for signature. Next to him on the Bench sat a lay judge, Ledwith, a respectable manufacturer of leather who, of course, knew no law whatever. Kirkpatrick was aware that Judge Henry—then Judge of the District Court in Newark—had a supreme contempt for Judge Ledwith; and so, without consulting Judge Ledwith at all, he handed back the proposed order to the messenger, saying, "Return this paper to Judge Henry with the statement that Judge Ledwith says it is not in proper form!"

He later became Judge of the United States District Court and performed the varied and important duties of that office with great dispatch and satisfaction. It was currently supposed that he owed his appointment to the recommendation of Senator James Smith, Jr., who was then in the United States Senate.

An application was made to Judge Kirkpatrick for the appointment of a Receiver of the United States Shipbuilding Corporation. The application was fiercely contested and, while the matter was under consideration, Senator Smith and quite a party, of which I was a member, had a day's excursion up the North River on my brother's yacht. At luncheon the question came up as to whom Judge Kirkpatrick would probably name as Receiver, and Senator John Kean, who was one of the guests, addressing Senator Smith, said, "Jim, don't you think the Judge will obey the Christian mandate 'Remember now thy creator in the days of thy youth'?" We had a good laugh. Smith was appointed!

Frederic Adams

Judge Adams practiced modestly and quietly in Newark until he was specially appointed as a Judge of the Court of Errors and Appeals, in which Court he sat just as modestly and quietly for a number of years, impressing everyone—including, I think, his associates—with his marked ability and practical common sense. He was later made a Circuit Judge, and sat in Essex County for several years, discharging his duties in a most satisfactory manner. He was a man of fine mind, a well developed literary taste, and blessed with a good memory and a high sense of humor. He was very old fashioned in his tastes, however. I remember, before

he went on the Bench, one day meeting him in the corridor of the Prudential Building in Newark, and being asked by him whether I happened to know if Vice Chancellor Pitney was that day at his office in Morristown. I replied that I did not, but suggested that Adams telephone and ascertain. He replied, "Oh no, I don't care to use the telephone. I very much prefer to go up to Morristown and take my chances!"

Once I was trying a case before him and a jury against the town of East Orange. The Town Attorney was assisted in the defense of that action by my friend the late Edward M. Colie, who, in that case, outdid himself in pertinacious disagreeableness. Colie, although an able man, was very unpopular, and finally, on that occasion, I lost my poise, and said to him, "Mr. Colie, I am your last friend at the Essex County Bar, and if this method of conducting this case doesn't cease, you will lose me as a friend also!" Judge Adams was so amused that he left the Bench, retiring to his back room for a brief recess. We all cooled off and the case proceeded. Judge Adams was one of the cleverest after-dinner speakers I ever knew, and countless anecdotes exist of his witticisms, among which I will mention the two following:

On Saturday morning, on a motion day before him, a distinguished lawyer from New York, who had some business before the Court, was sitting in that court-room, and constantly tipping his chair backward, when all of a sudden he lost his balance, the chair turned over, and the gentleman found himself upon the floor, and this caused great noise and confusion in the court-room. The Judge, in a very calm manner, brought his gavel down, rapping for silence, and in a very quizzical,

kindly way, looking directly at the distinguished lawyer from New York, who had just arisen from the floor, and was straightening out his disarranged clothing, said, "Are there any more *ex parte motions*?"

John Franklin Fort, who had been a Justice of the Supreme Court, and Governor of the State, and had just returned to the practice of law, appeared before Judge Adams on a motion. The ex-governor, who was very apt at flattering remarks, said, "Your Honor has decided the very question that is now before you for consideration, and your Honor gave such deep study and consideration to the principle involved therein, and wrote such an exhaustive analysis in the opinion which I desire to cite, that the Court of Errors and Appeals unanimously affirmed your Honor's conclusion, and made your Honor's opinion the opinion of the Court of Errors and Appeals." Quick as a flash, Judge Adams said, "Well, Governor Fort, one cannot always be wrong!"

On another occasion, it is related that there was an appeal from the award of damages made by the Assessment Commissioners of the City of Newark, involving the damages for taking of certain property. On such an appeal, it is the law of the State that the Assessment Commissioner's report is not evidence. After the evidence had been presented by both of the parties, and the summation had taken place, the Court charged the jury as to the law, and just before the oath was administered to the jury, the foreman of the jury asked permission to propound a question to the Court, and upon his request being granted, he said to the Court: "It would be of great assistance to the jury, if we could have before us the report of the Assessment Commis-

sioners, so that we might ascertain what damages they awarded the appellant in this case"; whereupon Judge Adams replied very promptly, "The report of the Assessment Commissioners is not evidence. It is like the ankles of the Queen of Spain: not to be looked at or even imagined! Gentlemen, you may take the case."

His health breaking down, he left the Bench, and died all too soon.

Judge Nelson Y. Dungan

It always seemed to me that Judge Dungan was an ideal *nisi prius* judge, and I think he was the best man that has ever sat in the Circuit Court since it was instituted in its present form. He was calm, pleasing in manner, but decisive. He never allowed his friendships to swerve him one iota from the path of duty as it lay before him. He was naturally brought in close contact with many lawyers during the long time he presided at the Essex Circuit, and he had the courage not to bend backwards in his contacts with his friends. I recall no judge who was more genuinely popular than he, and yet I do not think he ever made the slightest effort to gain popularity. He had a natural and laudable ambition to be promoted to the Supreme Court, and many of his friends joined, whenever a vacancy existed there, in an effort to bring about his appointment. Somehow or other, his friends were never successful, and I confess I never understood the reason why. Everyone conceded that he was justly entitled to the promotion, and that he would be a great addition to the Supreme Court. As illustrative of the way these appointments go, I relate the following incident. Justice Charles C. Black had retired from the Supreme Court, thereby

creating a vacancy. I met the private secretary of the Governor at lunch one day, and he said to me, "The Governor has not heard from you about the vacancy in the Supreme Court." I replied, "Of course everyone knows, including the Governor, how I feel on that subject. I think Judge Dungan should be appointed." He replied, "We all feel that way, but the South Jersey Bar, particularly at Atlantic City, have convinced the Governor that they should no longer be subjected to the burden of going to Jersey City or North Jersey for writs of *certiorari* and other current matters coming up before the Supreme Court Justices assigned to the South Jersey circuits." I said I had a great deal of sympathy with that view, and I thought that the Governor was right in turning an ear to that demand for the appointment of a judge living in the southern part of the State, but that would be the only thing that would content me as against Judge Dungan. The appointment followed in a few days in the person of then Circuit Judge Campbell, who lived in Hackensack. The South Jersey lawyers, in order to reach him, had another hour added to their journey!

As I here review this list of judges in our State I confess to a great pride in them. Daniel Webster in one of his fits of eloquence exclaimed, "There stands Massachusetts!" So I remark, "There stand these judges!" They have all passed on, but they have left indelible marks upon the jurisprudence of New Jersey.

Here, again, references must be made to only a few, none of whom is now living.

When I came to the Bar, there was a galaxy of what then seemed to me to be "old men", in full pace. Frederick T. Frelinghuysen, Jacob Vanatta, John P. Stockton, Jehiel G. Shipman, Cortlandt Parker, Barker Gummere, Anthony Q. Keasbey, Robert Gilchrist and Thomas N. McCarter, Sr. What a galaxy they were! I knew them all, and admired them much. Their reputations had been made, and I can add nothing there. I have frequently heard William D. Guthrie, the distinguished lawyer of New York City—to whom I will later allude—remark that in his broad and somewhat cosmopolitan practice he had never met an equal number of lawyers whose ability had so impressed him.

I recall two incidents which perhaps I may relate touching two of these gentlemen. Mr. A. Q. Keasbey was for years United States Attorney for the District of New Jersey, and I think I may say, without any criticism, or in any way derogating from the long line of capable men who have filled that post, that he was the most efficient and able District Attorney in this District in my day. During his term the whole State was greatly shocked at the failure of the Mechanics National Bank, an institution that had been for years a leading one in the State, its banking house located in Newark on Broad Street above Market, where the

Howard Savings Institution now stands. The failure was due to mismanagement on the part of the cashier, who was sent to prison. The Bank had a distinguished board of directors, many of whom were wealthy, and none of whom had any guilty knowledge of the shortcomings of the cashier. Mr. Keasbey at once busied himself to compel these directors to contribute cash to make up the loss, largely because of their alleged negligence. One of them lived at that time on Park Place in Newark, and was reputed to be quite wealthy. Mr. Keasbey spent the night with the Marshal of the District in the house of this gentleman while the latter was determining whether he should pay $250,000 or be indicted for his alleged negligence. The all-night vigil was rewarded by an agreement to settle.

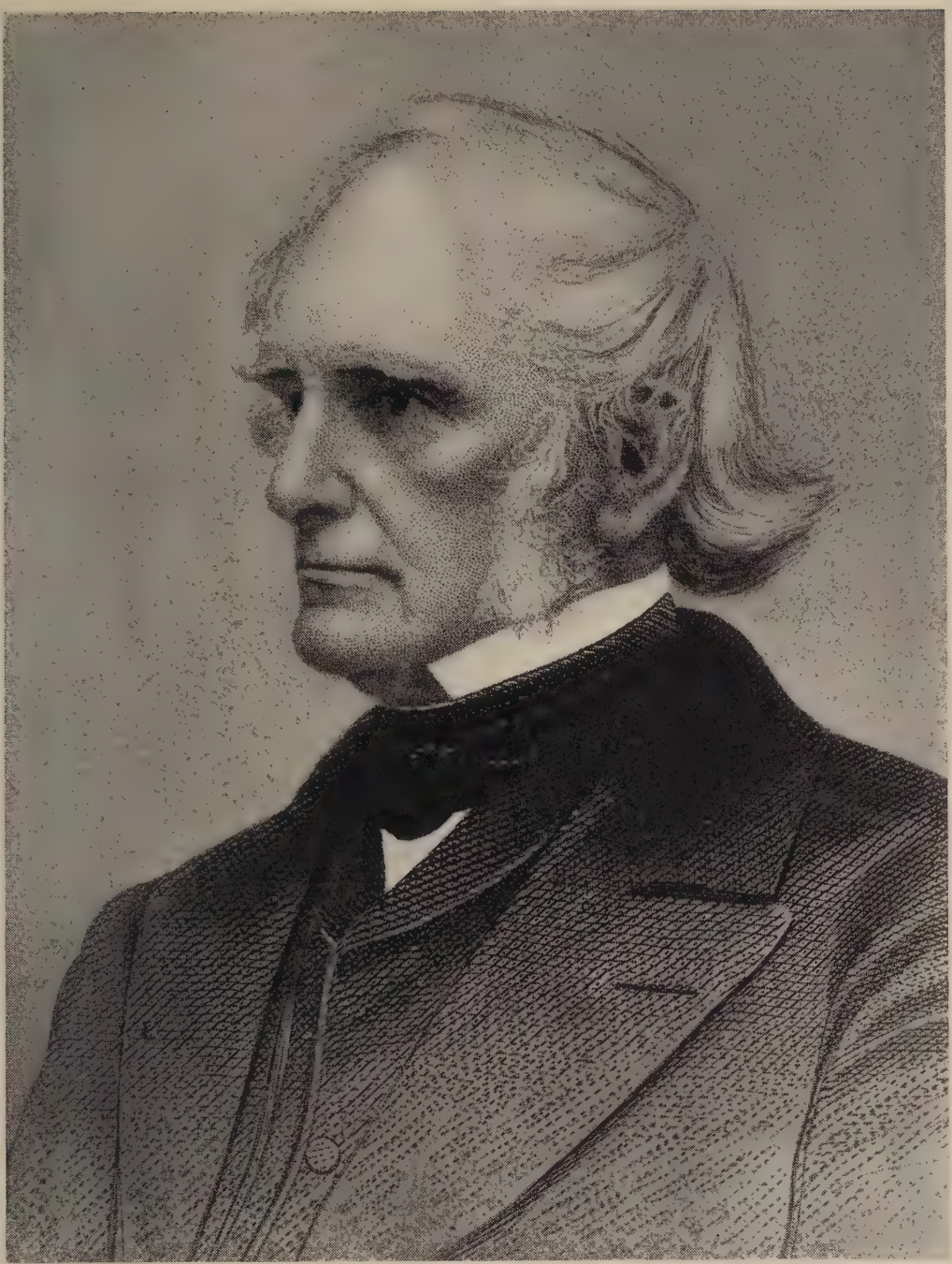
Another incident is interesting to me. Robert Gilchrist was a lawyer of distinction, practicing in Jersey City. He had been Attorney General of the State, and was a great student of the law, down to the time of his death. I once heard him say that one evening he became so interested in reading "Fearne's Contingent Remainders" that daylight was peeping in the window before he knew it. Probably few lawyers nowadays have ever heard of this book. At that time, however, it was reputed to be the dryest and most difficult reading in legal literature.

The professional bills of Mr. Gilchrist were very unusual. He charged for everything. I remember seeing a bill he sent to the Lehigh Valley Railroad Company for legal services rendered. It was all in manuscript, about an inch thick, and consisted of hundreds of items, one of which was, "To services reading letter from Robert H. McCarter, twenty-five cents," and

another—the last—was, "To services drawing this bill, twenty-five dollars."

These "giants" were about the last of those whose habit it was to remain in Trenton during the terms of the Supreme Court and the Court of Errors. They used to stop at the Trenton House, and when Chancellor Vroom, a very handsome man, whose portrait is in this volume, was Chancellor, he, every evening, would sit at the head of a long dining table, occupied by the then prominent lawyers, in the regular dining room of that then popular hotel. Before they sat down to eat their meal, the Chancellor would say grace. This has always been, to me, a beautiful story of the intimate and religious nature of the Bench and Bar at that time.

Following a little after these, was Samuel H. Grey, who topped a successful career at the Bar by serving as Attorney General. He was a very adroit and able lawyer, and led the South Jersey Bar for several years. He was well known and greatly liked by the Bar throughout the State, many of whom were very much amused at the following incident. A criminal case—*State v. Noonan and Simpson*—was to be tried in Hudson County, and the then Prosecutor of that County requested Attorney General Grey to assist him at the trial. He did so, and later rendered a bill to the County at one hundred dollars a day for his services. A newspaper in Hudson County, learning that the statute which fixed the Attorney General's salary prohibited him from receiving any extra compensation for his services as such, with a great flourish of trumpets published a copy of the check that Mr. Grey had received in apparent ignorance of this provision of the statute. Of course, he returned the fee.



Peter D. Vroom

During the latter part of his life, although he was still practicing, he suffered from some heart ailment. He had for years represented a Philadelphian by the name of Robb in some litigation in New Jersey. Mr. Robb, whom I knew, felt that Mr. Grey needed assistance, owing to the condition of his health, and wrote me requesting me to attend a conference at Mr. Grey's office. Of course I stated that I could not do so unless Mr. Grey, whom I knew and loved, should ask me. I later received a letter from him in which he casually remarked, "I understand you are to be at my office next Monday." I interpreted this as expressing his entire cordial acquiescence in the idea of my assisting. I was pleasantly received by him, and we at once conferred about the situation in the back room of his little one-story office in Camden. A question arose which we both thought had been decided, and Mr. Grey walked hurriedly into the library, stood up on the arms of a wooden chair and reached up for the volume that contained the case. He was very stout, far from well, and I was afraid he would lose his balance, and in my interest in him I said, "Mr. Grey, *you* mustn't do that. What am *I* here for?" I shall never forget the piercing way in which, with an entire change of manner, he looked down upon me from his shaky height and said, with a good deal of feeling, "That is what *I* want to know!" If it had been anybody else, I would have left the conference.

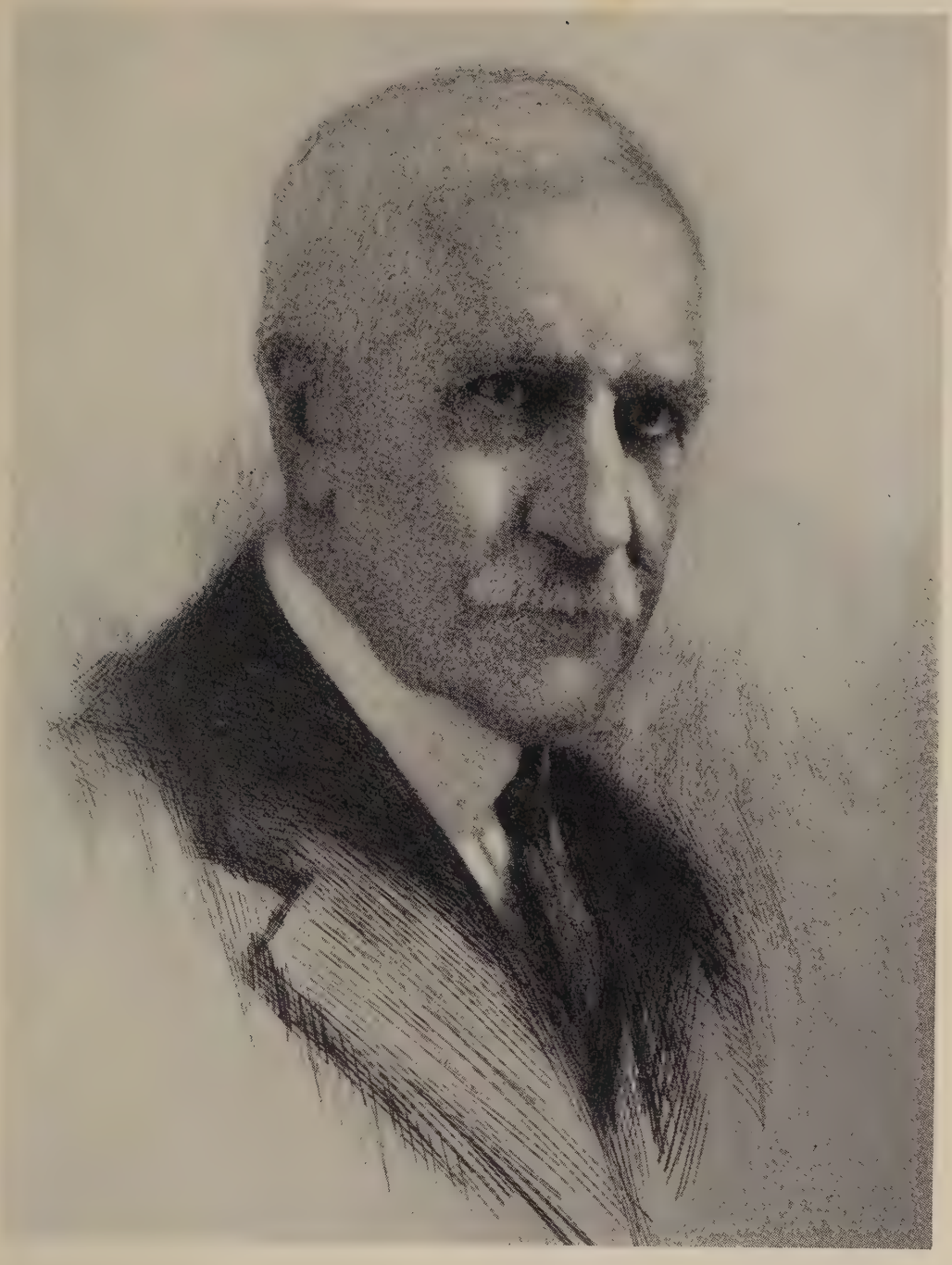
Some time after his death I was sitting at my desk in the Attorney General's office in Trenton, and was visited by one of Mr. Grey's sons-in-law. He told me that not long before his death, a beautiful portrait of Mr. Grey had been painted by a French artist, and as

no specific bequest had been made of it, there was trouble in the family as to who should have the portrait. He suggested that I write to the family, as Attorney General, stating that I had heard that this satisfactory portrait was in existence, and that in view of the great service that Mr. Grey had rendered the State of New Jersey, I thought it would be appropriate that it be presented to the State and hung in the corridor of the State House at Trenton. The portrait arrived in due course, and has ever since hung in the State House.

Richard V. Lindabury

I will next refer to Richard V. Lindabury, whose portrait hangs in my office. I have frequently been heard to say that I have concluded, after due consideration, that he was the best all-round lawyer that New Jersey has ever produced. When I first became acquainted with him he was practicing in Elizabeth and was beginning to manifest the skill and ability that for years afterwards he showed in his large and increasing practice. It may encourage the impecunious and idle young men at the Bar at the present time—of whom I hear there are many—to learn that Lindabury did not succeed in the first years at the Bar in Bound Brook or in Jersey City. He came into prominence from the skill with which he conducted the prosecution in Ocean County of a homicide case. The Freeholders of that County for some reason refused to pay his bill, and he was compelled to bring a suit for it!

In the same building where his office was located in Elizabeth, Frank Bergen had his office. They became warm friends, and continued such until death separated them. I could fill pages recounting incidents



Richard V. Lindabury

that I have observed or heard of, manifesting the great skill of Lindabury in his varied practice. His reputation outgrew the State of New Jersey, he became a national figure, and at the time of his death was not only General Counsel, but a member of the Executive Committee, of the United States Steel Corporation. I attended a dinner given in his honor in New York by some of his friends, commemorating, I think, his seventieth birthday. There were present representatives of the Metropolitan Life Insurance Company, J. P. Morgan & Company, the Standard Oil Company, the United States Steel Corporation and other prominent corporations. Each one of those representatives frankly stated that his Company took no step of importance without first submitting it to Mr. Lindabury. By this time he had practically ceased to try jury cases. I created some amusement at that dinner by telling the following story, which I had been credibly informed was true. It was the last jury trial in which Mr. Lindabury participated, held in the Essex County Circuit. One of the parties was Receiver of a National Bank. At the time this trial was had, the petit jurors of Essex County were men of no financial position whatever, to whom the two dollar daily fee was a matter of considerable concern. The twelve men were all in the box. I venture the guess that not one of them had ever been in a bank. Mr. Ochiltree, the fat Court Crier, was distributing the Bibles among the twelve, that they might be sworn in, when Mr. Lindabury arose, and giving the impression that it had just occurred to him, he asked the crier to pause a moment, and turning to the jury with a very inquiring look, said, "Gentlemen, is any one of you a director in a National Bank?" Of

course, they all shook their heads with pride that they were not, and after that everyone was for Lindabury.

I will never forget the third trial of the case, already referred to, of *Hodge v. the Lehigh Valley Railroad,* after the interlude about the demurrer was disposed of. Lindabury had a bad abscess or boil on his right cheek, which protruded angrily, and gave him a great deal of pain. He bore it manfully, pointing his deformed face to the jury and momentarily receiving more and more of their sympathy. A view of the *locus* by the jury was ordered. It was reported to me after the view that Hodge, the plaintiff, had treated the jury to drinks at an hotel in Bound Brook. This was brought to the Court's attention, and the jury was at once discharged. I think Lindabury was more mad at his client than he was at the Court on the previous trial. His patience finally gave out. He was now engaged in a most profitable practice, his time fully occupied, and he felt he could no longer act in a case in which he was receiving no compensation at the time. The result was that later a judgment of non-suit for want of prosecution was entered by the defendant, with costs; and years afterwards, when Hodge the plaintiff wanted to sell his farm, he had to pay a considerable bill of costs to his old adversary the Lehigh Valley Railroad Company! The *denouement* justified the tactics evolved by Chancellor Williamson in inaugurating a campaign to exhaust the plaintiff.

An example of Lindabury's zeal as an advocate, which always possessed him and sometimes, I thought, overcame his good judgment, occurred at Somerville in a suit brought by the engineer and fireman of a locomotive belonging to the Lehigh Valley Railroad

Company, both of whom were injured in a head-on collision between two trains. Lindabury represented both plaintiffs, who brought separate suits, and I appeared for the Company, at Somerville, before Judge Magie and a jury. To save time, it was agreed that the cases should be tried together, and after a day or two spent in taking testimony, the Company settled with the fireman, but not with the engineer; and the question was, how to keep from the knowledge of the jury the fact that the settlement had been made, and at the same time stop the ceremony of having the witnesses sworn in both cases. After some discussion between Lindabury and me, we went to Judge Magie, told him of our predicament, and I suggested that we simply cease naming the second case either in the swearing of witnesses, or otherwise, and practically have the attention of the jury thereafter confined to the one case. Lindabury, apparently seeing and agreeing with the propriety of keeping the settlement from the knowledge of the jury, expressed his assent to my proposition, but the Judge said that that would not do, and suggested that upon the return of the jury after recess, I should openly announce that I had withdrawn my consent to the trial of the cases together, and he would then say, "Very well, the one case will then proceed." Lindabury suggested that this plan should be adopted and committed to paper initialed by him and me. I agreed, and when the jury was in the box, with the memorandum in my hand, I made the announcement to the jury, strictly in accordance with its terms. As soon as I had finished my statement and Judge Magie was in the act of nodding his assent to the situation, Lindabury blurted out, in the plain hearing of the

entire jury, "Yes, Your Honor, inasmuch as we have settled one of the cases, we thought we would take this course!"

He was an indefatigable worker. The last time I saw him was a beautiful Sunday afternoon in the Autumn. My wife and I called upon Mrs. Lindabury and him, at their suggestion, at his lovely farm near Bernardsville. It was an ideal day. His wife and daughter, without hats or coats, were in the flower garden. As we approached the house, word was sent to Mr. Lindabury, and we found that he was hard at work on some law matter in his study.

I have often said, and am glad here to repeat, that frequent association in the trial of cases, either with or against him, has proven to be of the utmost benefit to me.

Frank Bergen

There is a peculiar appropriateness in speaking next of Frank Bergen. I have already adverted to the life-long intimacy that existed between him and Lindabury. Each had practiced for years in Union County, and each had a fine country place near the other in Somerset County. They were as different as possible, but each had a warm affection and admiration for the other. Bergen, like Lindabury, had no collegiate education, but he soon developed a fondness for literature, something which I think Lindabury never acquired. In the early years of Bergen's practice, the City of Elizabeth became practically insolvent, and so great was the assistance, legal and otherwise, rendered by Bergen to the City in extricating it from its financial plight that a public dinner was given to him, at which

a handsome piece of silver was presented as a slight tribute of everybody's appreciation of what he had done and for which he received, and expected, no fee. At the creation of the Public Service Corporation he became its General Counsel, and continued to occupy that position until his death. He was, I believe, the best-posted lawyer in New Jersey on the law governing public utilities. In the latter part of his life he published two volumes of his own essays and speeches. I cherish the set he gave me. He took great delight, concerning almost any subject, in taking a view that was diametrically opposed to that entertained by the majority. For example, he always contended that the Declaration of Independence was full of fallacies. He had, however, a rare foresight, and predicted long before anybody else foresaw it the financial calamity that was to follow in our State from the constantly increasing taxes that were imposed. He pretended never to take a vacation, and with childish delight, in the hottest months of summer, would point to his commutation ticket from Bernardsville to Newark, fully punched, as indicating his daily attention to business.

He had a very keen sense of humor, a very extraordinary knowledge and acquaintance with the principles of law, and a great familiarity with English and American literature. A strong memory enabled him to recall and quote, at great length and almost verbatim, remarks or statements that had been made, and which he had read from time to time. He was altogether quite unique, and I think it may truthfully be said of him that "none knew him but to love him."

I attended his funeral on a beautiful afternoon, on the heights outside of Bernardsville. He was over

eighty years of age, but a great throng of friends and admirers who appreciated his character were there gathered to pay their last tribute to him.

The Corbins

This catalogue would be quite incomplete did I not mention the firm of Collins & Corbin, consisting of Charles L. Corbin, William H. Corbin and Gilbert Collins. The two Corbins were brothers. Charles, the elder, was in appearance a singed cat. Like Ichabod Crane he was "tall and exceedingly lank", but what a brain he had! His hair was always very long, hanging down on his lower neck, and quite late in his life he broke his hip so that thereafter he was compelled to use crutches. He lived near Metuchen, and went daily to his office in Jersey City. Lindabury told me once he feared Charles Corbin as an antagonist more than any other lawyer. He had no prowess with a jury, but for writing and arguing a brief in our upper courts he was unsurpassed. He seemed to lack sentiment, and struck a comparative stranger, such as I was, as being devoid of all the social amenities. He was very highly regarded by New York lawyers, however, and in the days when a great deal of litigation arose in New Jersey in connection with corporations organized here before the adoption of the "Seven Sisters," he was almost always employed by them. It was said that once he had an important appointment at the office of Francis Lynde Stetson in New York. The time arrived and passed for him to appear, and finally Mr. Stetson walked to the outer room to tell the boy to telephone Mr. Corbin to find out why he wasn't there, when to his surprise, he found him sitting demurely in the waiting room. His

appearance was so uninviting that the custodian of the room had mistaken him for a peddler, and would not announce his presence to Mr. Stetson.

His younger brother, William H., was a tall, handsome, virile man, and a good business lawyer. As a very young man, he represented the receivership of the so-called Cordage Trust, and established a reputation for business sagacity and integrity. He compiled and published the first compendium of our New Jersey Corporation Act, which went to many editions, and has only been superseded since his untimely death.

Gilbert Collins

Gilbert Collins, the third member of the firm, was, I think, the most beloved member of the Bar of New Jersey in his day. There was something sweet about his nature, using that phrase in its highest sense. He had an agile mind, which early manifested its possibilities, and he was sent by his family from Rhode Island to study law at the Columbia College Law School. He was captivating in argument, either before a jury or a Court, and a very formidable antagonist. If he represented the defense in any case, he had the faculty of robbing the plaintiff's customary last statement to court or jury of all its force by constantly interrupting counsel, in a nice friendly way, and thus taking the sting out of his argument. The judges all liked him, and I noticed when any of them were unfortunate enough to need a lawyer, they generally employed him. He permitted himself, while in practice, to be imposed upon by all sorts of old and impecunious persons who imagined they had grievances. He quite often visited our home at Rumson, and I remember that on the

last occasion he was there he saw a collie dog we had, named Lassie, the name having been only incidentally spoken of. The following winter he lunched at my Newark home, and he heard a dog in our back yard bark. He said, "Is that Lassie?" This was only one manifestation of his phenomenal memory, as well as his charm. His ability was recognized so generally that he was finally appointed a Justice of the Supreme Court, and for a while presided at the Monmouth Circuit. I was then engaged with the senior Frank Durand and his then partner Hawkins in an action against three railroads, the Pennsylvania, the Central Railroad of New Jersey, and the New York & Long Branch Railroad, to recover damages for the family of an engineer who had been killed in a collision occasioned by a broken switch, which had veered his engine onto a siding and precipitated a collision with a heavily loaded ice-car. Alan H. Strong, a most able lawyer, represented the Pennsylvania Railroad Company, and Senator John H. Applegate of Red Bank—with his long beard giving him a meek appearance and concealing a very astute mind—represented the other two companies. Sitting at our table, and on our side, was a Monmouth County lawyer by the name of Eusebius Arrowsmith. Judge Collins presided. There was one question that our side didn't dare ask and, to our delight, apparently the other side was equally afraid of; and after the case had progressed for some time, Judge Collins startled us, and I think our enemy as well, by blurting out from the Bench this particular question. Quick as lightning, Arrowsmith jumped up and said before the witness had time to answer the question, "If your Honor please, this case is being tried by counsel

of experience on both sides. They have not seen fit to ask that question, and I don't think that your Honor should." Judge Collins blushed and said, "The question is withdrawn!" We felt the day was saved, and believed that the promptness of Mr. Arrowsmith was most potent in our securing a substantial verdict, which was sustained by the Court of Errors and Appeals.

Judge Collins once told me that while still presiding in Monmouth County he was visiting the late Wilbur A. Heisley, then the Prosecutor of Monmouth County, and on a summer's night was driving with Heisley in his buggy along Ocean Avenue at Long Branch. They passed the Pennsylvania Club, which was a well-known gambling house, and was brilliantly illuminated. He turned to his host and said, "Wilbur, I wish they would not have the lights quite so brilliant!"

Judge Collins was a very sociable man, and loved to talk with his friends. He found that the lawyers, out of what he believed was an unnecessary but perhaps commendable caution, rather avoided talking with him on his trips to and from Trenton; and so he determined to resign and return to practice, resuming his place in the old firm. He died a few years thereafter. An extraordinarily large meeting of the Bar was held in his memory at the Court House in Jersey City soon after his death, at which the universal appreciation of his character was most sincerely expressed.

James B. Vredenburgh

I will speak for a moment of James B. Vredenburgh, the son of Justice Peter Vredenburgh of the New Jersey Supreme Court, and a younger brother of William H. Vredenburgh, a leading lawyer in Monmouth

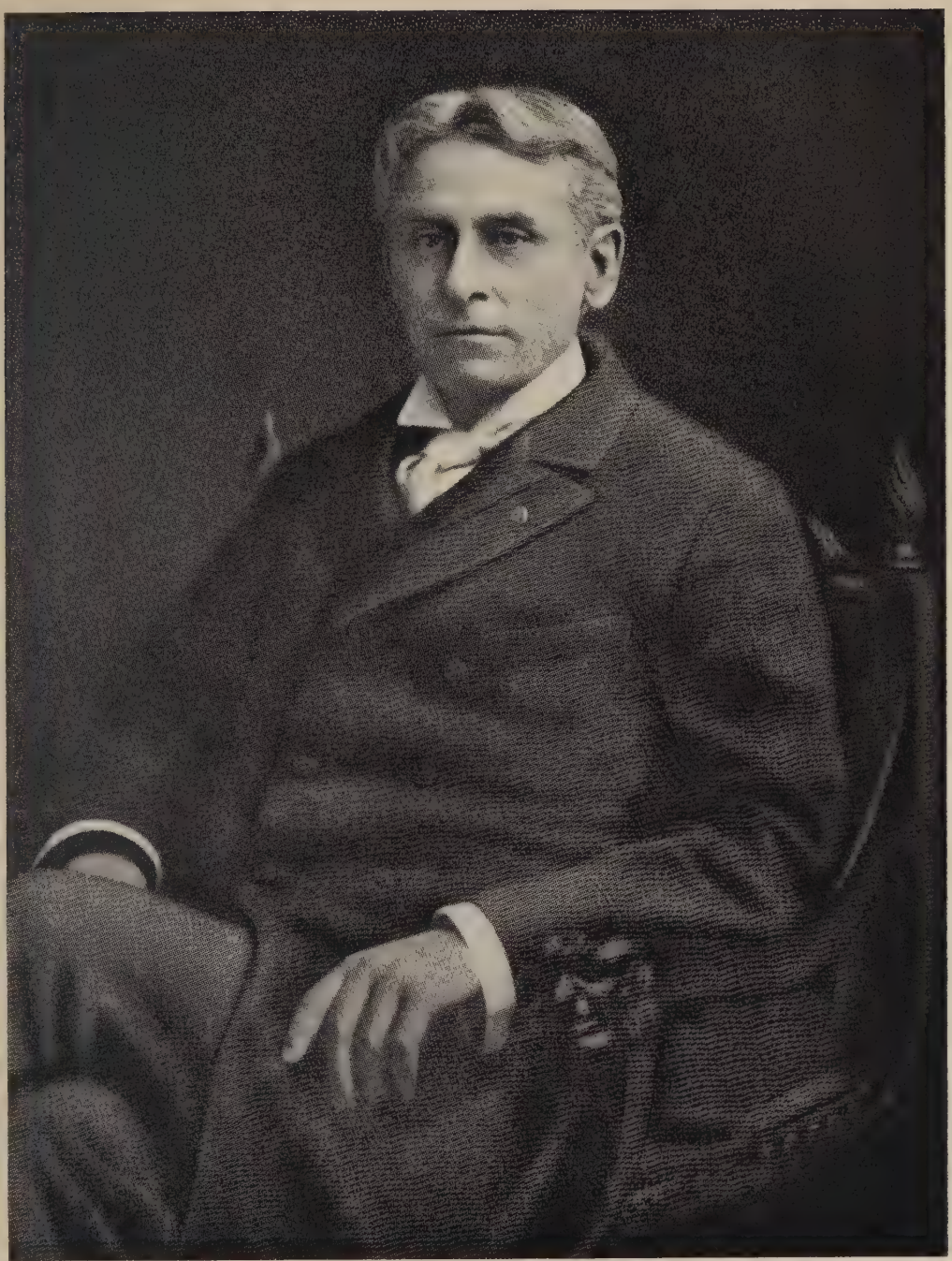
County, and a specially appointed Judge of the Court of Errors and Appeals. He practiced for years in Jersey City, representing most if not all of the time as local counsel, the Pennsylvania Railroad, and notwithstanding his great native modesty no one who ever had contact with him could question his ability. Judge Collins, who tried countless cases against him, once told me he considered him his most dangerous antagonist. He was a partner for years of A. Q. Garretson —afterwards a Judge of the Supreme Court—and made a most effective address before the Supreme Court at a meeting held after the death of Judge Garretson. He founded the present firm of Wall, Haight, Carey & Hartpence. I recall a remarkable scene that occurred in the Federal Court in Trenton in a suit in which both the Pennsylvania and Lehigh Valley Railroads were sued for damages suffered by a man who, as the railroads believed, was blown off the platform of a Lehigh Valley train en route from Newark to New York on the tracks of the Pennsylvania Railroad. It happened to be the first jury case heard by Judge George Gray of Delaware, who had recently been made Judge of the Circuit Court of the United States, after his service in the Senate and as a Commissioner to settle the terms of the treaty at the close of the Spanish War. Of course, both railroad companies were in harmony against the plaintiff, but each was seeking, if any liability were established, to throw it on the other company. The late Flavel McGee represented the plaintiff. The Lehigh Valley Company at that time was working under a plan by which its local New Jersey line—the Easton and Amboy Railroad Company—was operating its trains through New Jersey, and so it was our claim that

so far as the Lehigh Valley was concerned, the wrong company had been sued. Judge Kirkpatrick sat on the Bench beside Judge Gray, who had been out of practice for years and was quite unfamiliar with the New Jersey procedure. Mr. McGee seemed irritated by the fact that when he had asked me if I would concede that the Lehigh Valley was operating the train, I had declined. He then asked me what he should do. I replied, "Call the Superintendent, Mr. Donnelly." This he did, and Donnelly, when asked who was operating this particular train, promptly replied that it was the Easton and Amboy Railroad Company. I happened then to hold in my hand a bunch of papers, including a number of letters from the Law Department of the Lehigh Valley Railroad Company in reference to this particular case. Mr. McGee, suspecting that this file would show the real relation of the Lehigh Valley (a defendant) to the case, asked me openly before the jury to let him look at this file. Of course, I declined. He then appealed to Judge Gray and asked him to direct me to let him inspect my private file of papers, which I held in my hand and, to my amazement, I was so ordered. Judge Kirkpatrick, with that fine common sense that so characterized him, leaned over and whispered something to Judge Gray, who blushed and said, "I revoke my direction." The jury found that neither railroad was responsible for the wind that blew the passenger off the train, and gave the companies a verdict.

John W. Griggs

Griggs, who became Governor of New Jersey and resigned that office to become Attorney General of

the United States in the administration of President McKinley, was a very successful practitioner in our Courts, and easily led the Passaic County Bar for several years. He was a great friend and *protégé* of Garret A. Hobart, who was elected Vice President at the time McKinley was made President of the United States. Griggs was, like many other prominent New Jersey lawyers, born in Sussex County, but he migrated to Passaic, rather than to Essex County. I was associated with him several times, quite enough to become convinced of his wonderful power of clearing up difficulties that arose in the course of protracted trials. One of the cases that now come to my mind was a hearing before a commission to condemn a mill-site for the water supplied to the City of Newark. The commission was headed by Judge Frederic Adams. There were several counsel, including the late Joseph Coult, Joseph L. Munn and myself, and, between us all, many interesting and intricate questions were raised. When everyone but Griggs seemed to be tangled up, he in a few words, would cleverly clear up the situation and dissipate the confusion. I had also opportunity to observe him in action in the trial of the important case of *The Lehigh Zinc and Iron Company v. the New Jersey Zinc and Iron Company,* brought at the Sussex Circuit, before Judge Magie. The trial consumed several weeks. On the plaintiff's side were Gilbert Collins, Richard Wayne Parker, Charles D. Thompson and a Pennsylvania lawyer. For the defendant were the late Thomas N. McCarter, John W. Griggs, Thomas Kays of Sussex County, and myself. The issue involved was the character of the ore that lay in Mine Hill at Franklin Furnace, New Jersey, which under modern scien-



John W. Griggs

tific methods had developed into ore of great value. A large array of scientific witnesses on both sides was heard, and Griggs and I were selected to sum up the case for the New Jersey Company. My father and I had our working quarters at a boarding house in Newton, where we both burned midnight oil as the case progressed. Griggs generally spent his evenings playing billiards at the Cochran House there, and it was a source of some doubt with his associates whether he would be able effectively to argue the case before the jury; but somehow or other he possessed a great facility for imbibing and remembering the evidence, and made at the close a very effective address, although our side lost the case.

A very serious rear-end collision having taken place on the Morris and Essex branch of the Lackawanna Railroad Company on the Newark meadows, Griggs was retained by the Company to take charge of all of the many cases that were brought by passengers injured in the accident. One of these cases was commenced by Edward A. Day, who, in order to prevent a removal of the case to the Federal Court (the suit being against the Lackawanna Railroad Company, a Pennsylvania corporation) had joined as a party defendant the rear brakeman of the train, who lived in New Jersey. He owned a small house in the State, and showed his interest in the case by retaining Elwood C. Harris as his personal counsel. I happened to be in the Essex Circuit just before the trial of this case was opened, and overheard Griggs suggest to Day that they confine the issue at the trial to the *quantum* of damage, the railroad admitting liability. Day replied "No, I want the harrowing details" and Griggs said, "All right, you

can have them." The trial started, and when Day closed his case for the plaintiff, oblivious altogether of the nervous rear brakeman who had been utterly ignored and forgotten, Judge Harris, the defending brakeman's counsel, arose and moved a non-suit on behalf of his client. Day at once acquiesced and said that was all right; he didn't care. Judge Depue, who was presiding, pricked up his ears and said, "Mr. Day, it is obvious to me that you have simply joined this rear brakeman as a device to prevent the Railroad Company from removing the case to the Federal Court, a right it enjoys under the Constitution. I cannot tolerate such a practice, and I must, therefore, of my own accord, direct that a judgment of non-suit be entered in this case." Poor Day nearly collapsed, because the statute of limitations prevented his starting a new suit against the Company. I think in my long experience, I never observed a more disastrous policy in the trial of a case. Griggs rather added to Day's chagrin by inquiring of Day, quite audibly, how he liked the "harrowing details."

Just before Griggs resigned the governorship to assume the duties of Attorney General of the United States, he surprised everybody, including his own party, by recommending in a message to the legislature an investigation into the method of administering criminal law in Hudson County. The Republicans were in the majority in the legislature, and a committee was somewhat hesitatingly selected to conduct this investigation, about which neither Republicans nor Democrats seemed very enthusiastic.

I was invited by the chairman of the committee to act as counsel for it, and having been warned by a

newspaper friend in Trenton not to accept the job, as the legislature was not enthusiastic over it, before dealing with the invitation, I visited Governor Foster M. Voorhees, who had succeeded Griggs in the executive chair at Trenton, and frankly stated what I had heard, and told him as an old friend that I did not want to take the job if the party was not in earnest in the matter. I sat opposite the Governor at his desk in his inner room. He emphatically pounded the desk and assured me that he was very much in earnest, and advised me to accept. Reassured in this manner, I went upstairs and told the waiting committee that I would act. As soon as I got into it, I discovered that my newspaper friend had been right, as I received no cooperation or assistance whatever from either the committee or the officials at Trenton, and the investigation was a dreadful failure. I finally again called on Governor Voorhees, told him of the way the thing was drifting, and asked for the cooperation and aid of the party leaders. Again he pounded the desk. Each of us occupied the same chairs as before, but this time he said, "You know, Bob, I *never* was in favor of this investigation!"

Griggs never resumed very active practice in New Jersey after the expiration of his term as Attorney General of the United States, but formed a partnership in New York, and acquired a large and influential practice there. He was devoted to fishing, and very fond of golf. He never killed himself with work, and yet he always appeared to be equal to any emergency. He was very good looking and possessed a charming personality.

Joseph L. Munn

I must briefly refer again to Joseph L. Munn, who long since died, but who practiced for years in Newark, and for a long time represented in a most successful manner the Board of Freeholders of Essex County. He had a remarkable mind, and I happen to know that at one time it was suggested that he should be considered for the position of President of Princeton College. He was, however, a most slothful and negligent person so far as his own affairs were concerned. He it was who represented the mill-owner whose water rights on the Pequannock River were condemned in the proceedings described in the foregoing sketch of Griggs. The water company, whose interests I looked after, was satisfied with the amount of the award, and sent me as its counsel a check for about $25,000 to pay the award. Knowing Munn's habits, and of the fact that it was said he never opened his mail, I sent him a notice, both to his house and office, that I had the check for him, and would be glad to hand it over upon his signing a receipt. No attention whatever was paid to my message, and finally his client, with whom I was on very good terms, called at my office and in a most sarcastic tone said that he believed the East Jersey Water Company was good on execution, and that inasmuch as it did not see fit to pay the award, he was going to put an execution in the hands of the Sheriff. He was very mad. I smilingly went to the safe and produced the check that was now about six weeks old, and the letter book containing the copies of my two letters to Mr. Munn announcing the fact that I had the check for him. The client departed somewhat abashed, and

in the course of an hour appeared with Mr. Munn, with whom the matter was settled up.

Another incident, of which I was apprised by one of the staff of the *Newark Evening News,* illustrates in a poignant way the frightful carelessness of Mr. Munn. Mrs. Munn was very ill, and the *News* sub-editor, who had a farm in Monmouth County, was impressed with Munn's real grief at this illness, and by the story that his sick wife was very much in need of fresh eggs. He thereupon took the trouble every morning before leaving his farm to collect from the dirty chicken coop a dozen or more eggs, and at Munn's request, and to his apparent great gratification, promised to bring a dozen or so of these fresh eggs every day to Newark. He was requested to leave the eggs at a café kept by Charles J. Charles, just below Market Street on Broad. After my friend had left half a dozen boxes of the eggs at the designated place, he went in with another box, and was told by the manager of the place that the boxes already left there were still there, and it was foolish to leave any others. This inherent carelessness really spoiled what otherwise would have been a great career.

Edward M. Colie

Colie and I were contemporaries at the Bar of Essex County for a generation, he being slightly my senior. He was a very remarkable man, and possessed one of the most acute intellects I ever came in contact with. He was a very wide reader, well versed in philosophy, and indeed all literature, current or past. We were both members of a semi-literary club, the Fortnightly Club to which I have already alluded, and his papers read

at the meetings, as well as his discussions of papers that were written and read by other members, were remarkable; I think the best of any of the members. He was an excellent lawyer, and for several years prior to the elevation of Francis J. Swayze to the Bench he was Swayze's partner. They became very intimate friends. Colie suffered from an unfortunate mannerism that gave the impression, perhaps false, that he believed he knew more than the other lawyers, including the judges. This made it very difficult to get on with him. For years he suffered from a heart affection, and while walking on one of the streets of Newark he suddenly dropped dead.

I remember once coming from Atlantic City in the same train with Judge Swayze and Gilbert Collins. A dispute arose between Collins and me as to which Bar contained the better lawyers, the Hudson or the Essex County Bar. We matched names for some time, and finally I appealed to Swayze to support my contention. He modestly and almost apologetically referred to Colie. I apologized for my omission, and urged him also, as a prominent member of the Essex County Bar. The incident discloses that however inherently capable in the practice of a profession one may be, an element of popularity is a very essential ingredient to a reputation for ability.

Coult & Howell

It would be quite remiss not to mention the former firm of Coult & Howell, consisting of Joseph Coult, Sr., and James E. Howell, both of whom were Sussex County boys who practiced individually in Newton for several years and then came to Newark and formed

this partnership. Mr. Coult, tall and thin, was a man of unusual ability. He had studied law in Newton in my father's office, and I heard my father, long after he had had his own two sons as students in his office, say that Mr. Coult was the best student he had ever had. He was City Counsel of Newark for several years and was generally conceded to have been one of the best, if not the best, head of the City's Law Department, not even excepting Henry Young, Sr., who, besides being City Counsel for years, was Prosecutor of the Pleas of Essex County. His sons and grandson are preserving his good name.

Mr. Coult guided the City all through the important and arduous efforts that successfully resulted in the contract between the East Jersey Water Company and that municipality for the present excellent water supply that the City enjoys. I, as one of the Counsel of the Water Company, was closely associated with Mr. Coult in several litigations, and had full opportunity to appreciate his unusual ability. Like many brilliant men, he lacked system, and was very absent minded. I remember that when we were engaged day by day in trying condemnation cases, he would come up to my office about five o'clock in the afternoon, with a fresh copy of the local evening paper in his hands. He would lay it on a table in my room, and after a little gossip, would depart, invariably leaving the paper there. He seemed to luxuriate in mystery, and if he wanted to express the most commonplace idea he would whisper it in your ear.

His partner Howell possessed all the system and method that Mr. Coult lacked, and they made a strong team. Howell was very fond of books and he usually

spent his Saturday afternoons with some congenial friend in the book shops of New York. He was a great devotee of the Newark Free Library, and very intimate with Mr. John Cotton Dana, its remarkable Librarian. He became a Vice Chancellor, and performed his duties with great success and satisfaction. Mr. Howell was fond of good anecdotes, and I recall his saying that he once asked a young Jewish student in the office why he varied his signature, sometimes signing it "Henry" and at other times "Henry J." The boy replied, "I was baptized Henry, but circumcised as Henry J."

Unfortunately the last year or two of Howell's services were marred by his failing health, and he died all too soon. One of the most beautiful tributes I ever listened to was delivered at a meeting of the Essex Bar by the late Thomas L. Raymond, while Mayor of Newark, to his old friend James E. Howell.

Alan H. Strong

This record would be quite incomplete, should I omit to mention, however briefly, my long-time friend Alan H. Strong. He was brought up in New Brunswick, was graduated at Rutgers College, and inherited an appetency for the law from his father, with whom he practiced for several years. He was a very able lawyer, and while perhaps he had not much affability wherewith to please a jury, he almost invariably succeeded, in cases that he defended, in having the record contain some matter that upon review would result in a reversal. He was for years the local counsel for the Pennsylvania Railroad and so cleverly and successfully acted in that capacity that he was finally promoted to

be the General Solicitor of the Company, and moved his office to the general offices of the Company at the Broad Street Station in Philadelphia. I became very well acquainted with him in the case of *Hodge v. United States Steel Corporation,* in which the New Jersey counsel, besides myself, were Frank Bergen and Strong. I heard Gilbert Collins once say that one gets an opportunity to test the legal skill of a lawyer better when he is associated with you than when he is against you. At any rate, in the *Hodge* case, I was carried away with the skill, adroitness and industry of Strong. He and Willard P. Voorhees shared the honors of the Middlesex Bar, and always remained warm friends.

Edmund Wilson

Here was another remarkable man. He was the son of a Presbyterian minister who for a lifetime filled the pulpit in a small Presbyterian Church at Shrewsbury in Monmouth County. Wilson was educated at Princeton, and early manifested great oratorical ability. He practiced all his life in Red Bank, and was unsurpassed in Monmouth County before a jury. I heard Justice Fort (who, when Governor, appointed him Attorney General) express the warmest admiration for the way that Wilson conducted his cases when Judge Fort was presiding in Monmouth. He was adroit, a shrewd cross-examiner, and very facile with the jury. I sometimes wondered whether he was equally astute in securing a record when defending a corporation. He made a most successful and able Attorney General, being practically the last of those who personally argued most of the civil cases for the State.

I was against him several times, and have had many

reasons for acknowledging his skill. As Attorney General, he represented the State on the trial of two business men in Salem County who were indicted for conspiring to set their factory on fire. The case lasted a week or so, and Wilson's reputation was so great that the Court room was crowded, even during the evening sessions. Indeed, some of the businessmen of the town complained to me that they found difficulty in getting their meals at home because their wives all wanted to "hear Mr. Wilson"! We had a number of "run-ins" during this trial, but toward the close, he put his arm around me and handed me a copy of a then popular novel called "The Turmoil" with an affectionate inscription written by him. So in the case of *State v. Dougherty,* hereafter referred to, he was "here, there and everywhere," and between him and Justice Kalisch, who presided, the counsel for the defendants needed all their wits.

I was against him in a protracted will fight from Ocean County, heard by Vice Ordinary Foster. Wilson's clients were attacking the will which had been drawn by my old friend Halsted H. Wainright, who had been for years prior to his recent death the President of the Monmouth County Bar Association. He was also an intimate friend of Wilson. Wainright was a most important witness for the will, and his testimony, I think, bothered Wilson a good deal. At any rate, in addressing him, or speaking of him during the hearing, Wilson constantly called him "Mr. Wineright," as if he didn't know the name of his old friend. He quite succeeded in annoying Wainright, whose evidence, however, prevailed.

Wilson was a slave to the cigarette, and frequently,

when a question was objected to in the trial of a case, I have seen him rush out of the Court room during the discussion, hurriedly light a cigarette and take a puff or two, returning to the table in time to hear the judge's decision. He was nonetheless an altogether lovable character.

He died entirely too young, and the Bar of Monmouth County, who not only admired him, but liked him, presented the County with a portrait of him that does not do him justice. It hangs in the Court House at Freehold. I was asked to present the portrait at an occasion when there was a large gathering of his friends and former competitors at the Bar present to do him honor.

John G. Johnson & William D. Guthrie

I cannot here refrain from mentioning two great lawyers, who while not Jerseymen, were frequently in our courts, and whom I admired very much. First I will refer to the late John G. Johnson, whose picture hangs in my office, and whom I had the privilege of knowing quite well. When in his prime he was the recognized leader of the American Bar, and was a marvel in the ability with which he conducted an enormous business practically without assistance. He was proverbially a small charger, explaining to me one day that his practice had been so large and varied that he could argue three or four cases a day, and thereby, although keeping his fee in each case within moderation, he would be able to charge enough for the day's work. He amassed a substantial fortune which he invested largely in fine pictures, and these by his will he gave to the City of Philadelphia.

Johnson was quite ruthless in his treatment of other lawyers, even his associates. I remember I had successfully tried a case against a client of the late Joseph H. Gaskill, and secured a verdict. Gaskill appealed to the Circuit Court of Appeals at Philadelphia, and prepared an admirable brief to support his appeal. I arrived in Philadelphia in time for the opening of Court on a Monday morning to argue the case, and found John G. Johnson there talking to Gaskill. When I had an opportunity, I asked the latter if Mr. Johnson was in the case. He replied in the affirmative; that his client had insisted upon bringing Mr. Johnson in, and that he, Gaskill, had taken the printed book and briefs to Mr. Johnson at twelve o'clock the previous day, which was Sunday, and after a short interview had left the matter with him. Gaskill, who was saturated with the case—a quite complicated one—added "Dear knows how he will have had time to familiarize himself sufficiently to make an argument." His prestige at that time was such that almost all Pennsylvania Courts stood in awe of him, and when the case was called, with Gaskill and his client sitting there, and with Gaskill's brief—the only one for the appellant—already in the hands of the judges, Mr. Johnson arose and in his loud voice said, "There is but one point in this case, and that isn't in the brief. Your Honors may throw the brief right out of the window. Here is the point of this case:"—and he then spent nearly two hours elaborating the "one point." My verdict was sustained.

Judge Kirkpatrick, who on one occasion was sitting in the Circuit Court of Appeals, told me that Mr. Johnson had there opened a case for the appellant and had just about finished when a messenger came in and

whispered in Johnson's ear, whereupon he announced to the Court that he had just been summoned to the Supreme Court of Pennsylvania where he had a case to argue, and looking smilingly at his young assistant, he added, "I don't think anything my associate may say in his reply will spoil the effect of what I have already said!"

I myself had a most amusing experience with him in the Supreme Court of the United States in the famous case of *State v. Twining*. That case went to the Supreme Court upon the theory that the practice which had prevailed in the trial of an indictment against Twining had violated the Fourteenth Amendment. Twining, on the recommendation of his counsel, had failed to take the stand. The question was as to the practice of permitting the Prosecutor and the trial judge to advert before the jury to the failure of the defendant to take the stand, the contention being that this practice violated the Fourteenth Amendment, as depriving an accused of his inherent right of remaining mute. I was at Washington as Attorney General representing the State of New Jersey and seeking to uphold the conviction. Mr. Johnson represented Twining, and Marshall Van Winkle represented another defendant. Mr. Johnson opened the case suavely, telling all nine judges that the case involved a very interesting application of the Fourteenth Amendment, and then, pretending to believe that the Court might not have freshly in mind the provisions of the Fourteenth Amendment, he asked permission to read it to the Court, and, thumbing my brief, said to them, "You will find it"—looking down at me—"on page twenty-three of my adversary's brief." He paused a moment

and smilingly added: "I may say in passing that it is the only good thing in his brief!" My friend Marshall Van Winkle was quite outraged, but I laughed with the rest.

I next refer to William D. Guthrie of New York, for years a partner of Paul D. Cravath, and other leading lawyers. He had developed from a stenographer in the office of Seward & Decosta. He was a very able lawyer, recognized as such all over the country, and was frequently retained to argue cases involving constitutional questions before the Supreme Court of the United States. He was a great man for rehearsing his arguments, and one very hot Saturday morning he, Mrs. Guthrie, my wife and I were riding our bicycles in Elberon down Ocean Avenue towards Deal. It was so hot that we concluded to ask the ladies to go into the house of a friend, believing that in the excessive heat it was not safe for them to continue to pedal. I was trundling slightly behind Guthrie when I heard a curious noise, and looking up saw him with his right hand holding the handlebar of the machine, and in his left hand a memorandum containing the points in some argument he was to make, which he was then rehearsing! With all this, and many other peculiarities, he was undoubtedly a great lawyer, and as evidence thereof I offer the following. I was taking lunch one day in New York City with Mr. Maher, then the Clerk of the Supreme Court of the United States, who served in that and earlier subordinate positions in that court for a period of over fifty years. He did not know that I had any acquaintance with Guthrie. I said to him, "Mr. Maher, in the long time that you have

served in the Supreme Court, you have heard, of course, a great many arguments. Does any one stand out in your memory as excelling all others that you have heard?" He thought a moment and answered, "On the whole, I am inclined to think that the argument that Mr. Guthrie made in the *Income Tax* case is the one that now seems to me best to measure up to the level you speak of." He, of course, referred to the income tax case holding invalid the tax which was imposed before the amendment to the Constitution. One can imagine with what satisfaction I promptly wrote to my old friend Guthrie of the great compliment that he had received from this intelligent gentleman.

Some Interesting Criminal Cases

It has been my lot to have been concerned with some very interesting and somewhat famous criminal cases, and, although I have never sought a career as a criminal lawyer, I may, I think, with propriety refer to a few of them.

In *State v. Beutinger,* the defendant, an attractive young married woman with several children, lived in Caldwell in Essex County with her husband, who was a German, and apparently of the worst Teutonic type. During the night, she admittedly killed her husband, and at once informed the authorities of what she had done. She was arrested and incarcerated in the county jail, and I, associated with Walter G. Brandley, defended her. The case created considerable interest from the apparently cold-blooded manner in which the defendant had shot her husband five times, every shot being fatal. They were alone in her bedroom, and she was the only eye witness of the incident.

The case came on for trial and was vigorously prosecuted. We laid before the jury a pathetic record of marital infelicity, accompanied by brutal conduct on the part of the husband, with frequent threats to kill his wife. On the first trial, the jury disagreed, and the second trial followed promptly thereafter. The defendant made an excellent witness, and was undoubtedly giving a truthful account of her fear of her husband, and how on the night in question she was

visited by him, in a furious state of rage, in which he threatened to return to her room and kill her. While he was temporarily out of the room, she took a pistol from her bureau drawer and placed it under her pillow. This pistol had been procured by her, unknown to him, several days before the killing.

We were in the midst of the second trial, and the accused had described with great care and particularity a scene that had occurred between her husband and herself about two years earlier in Nagasaki, Japan, where they had had one of these quarrels in the course of which, in a loud voice, he had threatened to kill her.

The daily papers had quite full accounts of this testimony, and on the evening these accounts appeared I was eating my dinner at my Newark home when I was called to the telephone, and a very genteel voice inquired if I was the lawyer for the defendant in this murder case being tried in Newark. When I said I was, the lady on the phone said she had read in the New York *Evening Post* the defendant's account of the Nagasaki incident; that she was the wife of a naval officer, and had happened, en route from the Philippine Islands, to be in the hotel at Nagasaki on the evening when the quarrel had occurred, and that as her room adjoined that in which the quarrel was taking place, and the partitions were very thin, she could hear, and had plainly heard, the man threaten to kill his wife, and she felt she ought to bring this to my attention. I asked her if she would come out and testify, and she volunteered to do so. My carriage met her at the station the next morning, and brought her to the court room. She was a most attractive and genteel young woman, and her appearance on the stand

of course was an entire surprise to the State. Her evidence, given in a resolute and convincing manner, was very damaging to the State and helpful to the accused. She was vigorously cross-examined by Assistant Prosecutor Mott, but her story remained unbroken, and I always felt that it had great weight in bringing the acquittal that followed the second trial.

I recur to this incident not only because of its dramatic character, but as marking a great exception to the ordinary rule followed by most women of refinement: to shun the publicity of testifying in court.

Another most dramatic episode occurred in this second trial. The accused was a devout Catholic, and we called as a witness at the second trial a Mother Superior of a convent in New York State. She was a tall, solemn-looking woman, dressed in the habiliments of her order. She took the stand in a sober, serious manner and gave testimony that no one, of course, could question. When she left the stand, she walked slowly down to the accused, who sat at my side, kissed her and then left the room.

The Hall-Mills Case

The next case to which I shall allude is that familiarly known as the Hall-Mills case. In the month of September 1922, the public was greatly startled to learn that in a somewhat secluded spot in the environs of the City of New Brunswick, the dead body of a prominent Episcopal clergyman of New Brunswick was found lying beside that of a rather attractive-looking young woman, the wife of a janitor of a public school in the same city. She had been a prominent parishioner of the clergyman. The bodies had apparently lain

there some time, and the greatest excitement arose. It was said that seventy-five newspaper reporters from all over the country came to, and remained in, New Brunswick for over a month, ferreting out the scant facts in connection with this murder. It transpired that Mr. Hall, the deceased clergyman, was the husband of a well-bred and well-known lady, who was deeply interested in his parish work, and was also a person of the highest character and standing, with a fine social position. The newspapers, proceeding on the theory that the clergyman had apparently been too devoted to his parishioner, endeavored to build up a story that involved Mrs. Hall with the murder, grounded upon her alleged jealousy of the woman. The spot where the bodies were found was in Somerset County, although just outside of the city limits of New Brunswick. The criminal authorities of Somerset County, as well as those of Middlesex County, joined zealously in an effort to discover who was responsible for the deed, and finally the matter was laid before the Grand Jury at Somerville, which body declined to find any indictment, and the matter was apparently to remain a mystery. Four years elapsed. Mrs. Hall continued to dwell in the house that she owned and in which she resided in New Brunswick, pursuing her daily avocations, although, of course, greatly stunned and shocked at the disclosures concerning her husband, and grieved at his sudden death. After these four years the matter had entirely quieted down, when at about ten o'clock on the evening of July 28, 1926, while Mrs. Hall was in the act of retiring for the night, she was disturbed by a loud knock at her front door, and upon investigation found a police officer there, and

a crowd of newspaper reporters and other persons with apparatus for taking her picture. After being told that she was under arrest for the killing of her husband she was escorted to an automobile and was taken at that hour to Somerville, where she spent the night in jail.

Shortly after the finding of the bodies in the year 1922, I had been asked by Mr. Timothy N. Pfeiffer, a member of the New York Bar and Mrs. Hall's personal counsel, to represent her in the event that she should become in any way involved. So long a time had elapsed that I had really quite forgotten this fact, when early in the morning after her arrest, while I was still in bed, I was called on the phone by my partner, Augustus C. Studer, Jr., who stated he was in the Somerville County jail; that Mrs. Hall had been arrested the night before, and that it was desired I should at once come out there. We immediately made an application to Chief Justice Gummere, at his summer residence at Point Pleasant, to admit her to bail. The reporters became apprised of our application, and almost surrounded the house of the Chief Justice at the time. To my delight, she was admitted to bail, and retained her freedom until the final acquittal. Later her brothers, Willie Stevens and Henry Stevens (the former of whom lived with her, and the latter with his wife at Lavalette), together with her cousin, Henry Carpender, were also indicted and incarcerated. Efforts to bail them were unsuccessful.

It soon transpired that a man named Payne, connected with a Hearst paper, the *New York Mirror*, and whose salary agreement as manager of the paper called for an increase in proportion as its circulation

was enlarged, had in his zeal conceived the idea that news of this tragedy would be most fascinating to the public, and so had determined to exploit the matter. He had very cleverly formed some kind of an alliance with the political machine of Hudson County (which was said to have considerable influence with the then Executive of New Jersey) to assist in his plan, with the hope on their part that the Democratic party, if successful in clearing up this mystery and bringing the true author of the dreadful crime to his or her proper punishment, would create a sense of public gratitude and thereby help persuade the people that the Republican party, which was in power in New Jersey at the time of the homicide, had not done its duty. Of course this effort to give a political tinge to the matter had never before been even suggested, and absurd as it was, Payne was clever enough to procure, on that theory, the cooperation and assistance of a prominent politician in Hudson County, who in turn was able to put behind the efforts which followed, the full support of the criminal machinery not only of Hudson County, but of the State of New Jersey as well. The result was that the then Prosecutor of Somerset County, a son of Justice Bergen, was practically thrust aside, and the conduct of the case placed entirely in the hands of Alexander Simpson, formerly, if not then, Senator from Hudson County, and an able, audacious and experienced man. At least five Hudson County detectives were deputized to look after the matter, besides a fingerprint expert from Jersey City. A motion was then made to change the venue from Somerset County, where the homicide occurred, to Hudson County. It was the unanimous view of all of the coun-

sel for the defense that if that motion had been granted, a conviction would probably have followed. One naturally inquires, Why all this zeal in Hudson County about a murder that had occurred four years before in Somerset County? Was it newspaper activity only, or had the political gossip some foundation? The whole thing remains a fascinating mystery.

For some reason, which counsel for the defendants could not fathom, the State shortly afterwards caused a preliminary hearing to be had before Judge Cleary, then Judge of the Court of Common Pleas of Somerset County, and weeks were spent in producing the evidence that had been collected in support of the indictments against these defendants. The object of this proceeding became later apparent to us in that it enabled the newspapers to publish the proceedings. We made no objection to this, because we believed it was very advantageous for us to be thus apprised in advance of trial of the facts relied on by the State to implicate the defendants. My associates in the case were, beside my partner Augustus C. Studer, Clarence E. Case (now Justice Case), Russell Watson, Timothy N. Pfeiffer, his assistant Nathaniel Palzer, and Robert H. Neilson of the New York Bar. Mr. Pfeiffer had done magnificent work in following up every clue that the diligent and active newspaper men during their investigation four years before had suggested, and all his files in connection therewith were beautifully systematized in the hands of his assistant, Mr. Palzer. Pfeiffer had the good sense to believe that he could get the best work out of the lawyers if he had them comfortably housed, and so a beautiful country house about two miles out of Somerville was procured and opened, and

a couple of Japanese servants installed. There we all lived during the trial. The weather was very cold, but we were most comfortable.

When the trial started, the Hudson County influence was again accented by the fact that the chief stenographer of the Hudson County courts was there with his staff, notwithstanding the fact that Somerset County had a competent official stenographer. One morning Mr. Simpson surprised us all by moving—with apparent seriousness—for a mistrial, upon the alleged ground of prejudice of the jury! There was, of course, absolutely no basis for the application, for the jury was confined in an hotel in Somerset County, and under guard when going to and from the Court House for their meals and lodging. We were, however, somewhat afraid that the motion would be granted. It was in fact denied.

During the further progress of the case, an amusing and perfectly unexpected incident occurred. I was in the barber's chair at a shop on a side street in Somerville one morning before Court. Being full of the case, and knowing that the whole town was alive with it, I ventured to inquire of the barber what he thought about the case, and he replied, "Oh, there is nothing to it. I shave some of the jurors every day, and I know what I am talking about!"

The famous "Pig Woman", whose alleged knowledge of important matters in connection with the homicide was the subject of so much newspaper comment, appeared in the court room the day the trial started, apparently perfectly well. Her daughter, to all intents and purposes a respectable woman, had communicated before the trial with one of our investigators and in-

formed us that her mother was altogether unreliable, but would not dare prevaricate in her presence. The moment the daughter appeared in Court, the Pig Woman completely went to pieces and was removed to a hospital in the outskirts of Somerville. An effort was made to examine her there, and the doctors whom the Court appointed to investigate her condition reported that she was not ill, but was malingering. She was thereupon surreptitiously removed to a hospital in Jersey City, and the newspapers were full of the story that she was very seriously ill. When it came time for her to appear and testify, she was transferred from Jersey City to Somerville in an ambulance, with bulletins at short intervals given out to the crowds along the route, announcing the condition of her health. The proceedings in Court were suddenly arrested, and amidst the greatest silence four brawny policemen from Hudson County entered the court room carrying a bedstead with the Pig Woman in it. On one side was a good-looking trained nurse in uniform, and on the other side a doctor from Hudson County holding her pulse. The whole thing was wonderfully staged, the point being, of course, that she was on the verge of death, and would not think of prevaricating in that situation. She told her story with a voice the strength of which varied with her forgetfulness of the part she was to play. She was very adroitly cross-examined by Mr. Case, and even Justice Parker cautioned him to remember that the witness was very ill, and that any excitement might result in her death. One can readily understand how dangerous a witness she was, lying as it were at the brink of eternity, and speaking as if every word was her last.

The prosecution also presented some evidence with reference to fingerprints, endeavoring thereby to connect Willie Stevens with the locality where the bodies of the deceased were found. Willie Stevens had for months after the discovery of the murder been discussed in the newspapers in flamboyant articles that endeavored to make him half-witted. Much well intended advice was given us not to put him on the stand. This, in our good judgment, was disregarded and he in fact made one of the best witnesses I ever heard testify. The fingerprint evidence went all to pieces, and was shown to have been purchased by Payne. I personally received during the trial a long letter from Francis L. Wellman, Esq., the experienced criminal lawyer of New York, and the author of many legal works, including *The Art of Cross-Examination*. He was and is a friend of mine, and he cautioned me about the danger of the evidence of the Pig Woman, suggesting that we engage an expert to prove how prone some people are for notoriety, as an explanation of her testifying.

The trial lasted a month and resulted in a triumphant acquittal of the three defendants who had been tried, Mrs. Hall, Willie, and Henry Stevens. The public in the meantime had become very indignant at the whole thing, and the morning after the rendition of the verdict Attorney General Katzenbach appeared voluntarily and insisted upon the discharge of Henry Carpender, who had now lain in jail one hundred days and had not even been brought to trial. He was a member of the New York Stock Exchange, a man of the highest character; and upon his reappearance on the floor of the Exchange he received a spontaneous

ovation from his fellow members. He shortly thereafter suffered a stroke, from the after-effects of which he died, and I personally have no doubt that this was entirely due to the unjust and cruel treatment he had received, for which he could never hope to get any redress. Payne, by the way, met his Nemesis. Not a great while after the verdict he started to cross the ocean in an aeroplane and was never seen or heard of again.

Prior to the Hauptmann trial, I suppose the Hall-Mills case created more public interest than any that had ever occurred, in New Jersey at least. The dignified New York Times published a *verbatim* daily report of the evidence on its first page. The newspapers all over this country and in South America and Europe, gave daily accounts of the progress of the trial, and later, while I was crossing the Pacific Ocean, I met a gentleman who at the time of the trial lived in Manila in the Philippine Islands, and was told by him that a daily bulletin was displayed during the trial in front of the leading newspaper office in Manila, which was constantly gazed at by hundreds of persons.

The fact is that there never was, in my judgment, a criminal prosecution based upon such ridiculous and fabricated evidence. There was not a scintilla of credible testimony to implicate any of the four persons indicted. The whole prosecution appears to have been a combination of newspaper and political effort, and the mystery surrounding the killing of those two persons remains today just as great as it was during the four years that elapsed between the time of their murder and the fantastic night arrest of Mrs. Hall.

Another case is that of *State v. Lilliendahl.* Dr. and

Mrs. Lilliendahl lived in Atlantic County where they had a nice home, and one child. The wife was a refined woman, whose life was more or less drab. She lived in the country. Her husband was busy and she became acquainted with a man of no particular attraction. One afternoon while she and her husband were riding in an automobile, the car was turned into some woods. A little while thereafter, Mrs. Lilliendahl appeared in the car and at once announced that the car had been stopped in the woods by a colored man, who had shot her husband, and after some ineffectual efforts to get some money, had disappeared. The State Police to whom the story was told, immediately put her under arrest, and the very brazenness of the transaction, in broad daylight, caused a great stir. Again the newspaper reporters got busy, and it was brought to light that Mrs. Lilliendahl and a man had for some time carried on a clandestine correspondence, a hole in a tree serving as a place for depositing their letters. All sorts of surmises arose, but the few letters that were discovered were quite harmless in character, and, as I argued, were simply the work of a foolish woman who had little to do except to develop a romance with someone other than the husband who was paying little or no attention to her. Both were indicted for murder, and I was asked to assist Mr. Charles M. Phillips, a local attorney, who zealously went about to investigate the facts. The trial came on at the midwinter term at Mays Landing, and was ably prosecuted by the late S. Cameron Hinkle, then Assistant Prosecutor of Atlantic County. Mrs. Lilliendahl had some influential friends and relatives of means who came to her aid and saw to it that she had competent counsel. All of her

friends, including her brother-in-law—the brother of her husband—fully believed in her innocence, and at the trial which followed before Justice Campbell (now Chancellor), a great deal of this evidence was presented, including some corroboration of there having been seen in the neighborhood an automobile containing one or two negroes. Save for the clandestine correspondence, the trial lacked any elements that really appealed to the public; and so, notwithstanding the fact that telegraph instruments and other means of satisfying the public curiosity were set up in the Court House, the case did not provoke much interest. After a trial of about a fortnight, the jury found both Mrs. Lilliendahl and the man guilty of manslaughter, which was, of course, a ridiculous verdict. It was either a foul case of deliberate murder, or the accused were innocent. Before and during the progress of the case, counsel for the defendants received strong intimations from the prosecution that if the pleas of "Not Guilty" were withdrawn, a light punishment in the way of fine would be recommended. With a keen appreciation of the dangers of the case, my associate and I had long interviews, together and separately, with our client, pointing out to her the dangers of the case, and recommending the acceptance of these suggestions. She pertinaciously refused to consider them, insisting upon her innocence. I was completely baffled by the case. The male defendant died in State's prison, and Mrs. Lilliendahl, after serving a few years at the Clinton Reformatory, was paroled.

Another case was that of *State v. Bavier,* involving about twenty-five strikebreakers who had been employed to help out a factory whose operatives were

on strike in Middlesex County. The strikebreakers, of whom there was a large number, were accustomed to go daily to the factory in trains, and the strikers becoming greatly enraged at the whole proceeding, attacked one of these trains in daylight with stones and other missiles, with the result that a fracas ensued, and one of the strikers was killed by a gun fired by one of the strikebreakers. Great indignation prevailed, Bavier and others were indicted, and some twenty-five men were detained in the Middlesex County jail for several months until the trial, at which I was employed to assist the late Joseph Stricker of Perth Amboy to defend the accused. Stricker was a very shrewd individual. He had been Assistant Prosecutor, and had considerable criminal experience, and when the case came on for trial before Justice Bergen and a jury, he prophesied that the State would have considerable difficulty in identifying any of the defendants as in any way concerned with the fracas, there being so many of them. Stricker shrewdly suggested that the defendants be distributed throughout the Court room, among the outsiders, as it would be difficult to have them within the bar, and more difficult for the witnesses for the State to pick out from among the crowd of sightseers those whom they claimed to have seen for a brief moment only, and from a considerable distance, at the time of the shooting. This plan, however, did not work. Justice Bergen insisted that the defendants all sit within the limits of the bar, in a row, and this, of course, made it very easy for the State's witnesses to identify the accused. An exciting trial followed, prosecuted by Attorney General Wescott, and resulted in a conviction of manslaughter, which on re-

view was reversed by the Court of Errors and Appeals —89 N.J. Law 214. The defendants were never retried, and the indictments were dismissed upon the payment by each of a small fine.

Another important case, and to me a most interesting one, was that of *State v. Dougherty and others,* in Atlantic County. There had been ugly rumors current in Atlantic City for years concerning the alleged corruption in its government. Atlantic County was a Republican stronghold, and Governor Wilson, upon his election, determined to make some effort to eradicate this evil. Having appointed Samuel Kalisch Justice of the Supreme Court, he procured his assignment to the South Jersey counties. He interested Edmund Wilson, who succeeded me as Attorney General, in the matter. Harvey Thomas, something of a crusader, although a Republican, had been appointed Postmaster of Atlantic City, much to the chagrin of the Democratic machine. Mr. Thomas was editor of the *Atlantic City Review,* a militant reform newspaper, and that paper almost daily hammered away on the subject. Justice Samuel Kalisch summoned an *elisor* grand jury, and as a result, several members of the Common Council of Atlantic City were indicted for a conspiracy to obstruct the administration of the laws. Some of the members of the Common Council were suspected of being corrupt in the performance of their duties. It was charged that they accepted bribes. The Burns Detective Agency was employed to ascertain the truth of the charges made. It sent an employee named Read to investigate. For the purposes of making the investigation, Read represented himself as J. K. Harris, of a New York firm of contractors, and as a member of

that firm, Read made a proposition to reconstruct the entire boardwalk in Atlantic City for a distance of four and one-quarter miles, and replace it with a concrete structure, for which work an appropriation of $1,500,000 would be necessary. Read was very clever, well dressed and apparently responsible, and after having ingratiated himself into the confidence of one of the councilmen, whose name was Phoebus, he started in upon a campaign to induce other members of the Council to vote for this proposed ordinance, offering them as much as $500 apiece if they would do so. Phoebus was the *liaison* between Read and some other members of the Council, and he interviewed them several times, laying before them the proposition, including the proposed bribe. Meetings were arranged for in Philadelphia and New York for the passing of the money, but without success, and finally at an hotel in Atlantic City, through Phoebus' efforts (he being the go-between), several of the Councilmen were taken to a back room on the second floor, where a dictagraph was installed, and each successively given $500. The indictment followed, but of course the whole thing was a mere scheme to entrap and really seduce the members of Council. One of them refused to go along, and I was employed, in association with William F. Sooy (the present Vice Chancellor) to defend him along with one of the other councilmen who flatly denied the receipt of a dollar.

The trial came on at May's Landing before Justice Kalisch and a jury specially selected, the prosecution being in charge of Charles S. Moore and Attorney General Wilson. At the opening of the trial some of the defendants pleaded guilty. The Court directed a ver-

dict of not guilty against two of the defendants, and after a protracted, vigorously contested and interesting trial of over a week, in which Attorney General Wilson displayed all his powers of advocacy, a verdict of guilty was entered against the two clients whom I represented. Mr. Sooy's particular client, being advised that there was no competent evidence to connect him with the charge, did not take the stand. Several interesting questions arose, including the admissibility of declarations of some of the accused (as testified to by Phoebus) made before the proof of any conspiracy whatever, and also similar declarations as against Murtland, after the proofs showed that he had declined to go along, and before any money, or the ordinance, was passed. Of course the fundamental question underlying the case was that of entrapment.

An appeal was taken by Dougherty and Murtland, and elaborately argued before the Supreme Court, Chief Justice Gummere and Justice Parker sitting with Justice Kalisch. That Court, in an opinion by Justice Kalisch (86 N.J. Law 525), affirmed the conviction. I then felt, and still believe, that it is bad practice for a trial judge, whose conduct of a case at the Circuit is under review, to sit in the Appellate Court and write the opinion. An appeal was then taken to the Court of Errors and Appeals, resulting in a reversal by a divided court, 6 to 5.

I have already alluded to *State v. Young*, the case of the doctor with a large and promising practice in Montclair, who was indicted for manslaughter. I rement ion the case here only that I may emphasize the propriety and importance of persistence in availing one's self of every legitimate means in defending a person charged

with a criminal offense, when counsel is convinced of his innocence, as I was in the Dougherty and Murtland case. The conviction of Dr. Young was not only affirmed in the Supreme Court, but in the Court of Errors, and that case is one of a very few in our reports, of which I am aware, wherein that Court on a rehearing reversed its former decision.

Another criminal case which illustrates the same thing in an unusual way, arose in Hudson County. Several election officers were indicted for illegally conducting an election, and I was employed, in association with Senator Simpson, to defend the accused. The trial was conducted before Judge Tennant, then County Judge of Hudson County, and was considered by him of such importance that he had the jury, after it was selected, segregated day and night, as in homicide cases. After about the third day of the trial, Simpson told me that a Court officer had informed him that a gentleman connected with the Prosecutor's office was, by direction of the trial judge, eating his meals and spending his nights at the hotel with the jury. We immediately called the Court's attention to this matter, insisting that there should be a mistrial. The judge who was responsible for it at once called a halt in the main case, and had the twelve jurors sworn and examined. All of them stated that while it was true they had been accompanied at their meals and in their quarters at the hotel by an unsworn man, he had said nothing to them whatever about the case. Judge Tennant thereupon declined to order a mistrial, and the case proceeded to a verdict against the defendants, and they were sentenced to imprisonment. An appeal was taken to the Supreme Court, principally because of this disclosure,

and resulted in an affirmance. We then went to the Court of Errors and Appeals, and the morning that the argument was to be had in that Court, Senator Simpson said to me, "I expect you to argue the case, but I think, in view of the fact that I have in my possession, as Senator, a bill to increase the salary of the Justices, it might be well for me to sit by your side during the argument." I cheerfully acquiesced in the suggestion. The conviction was reversed, as it should have been, and if perchance the Justices paid very close attention to my argument, that was our good fortune!

Speaking further of the good luck that attends persistence, let me here mention a case in which I was employed to defend a young man charged in bastardy proceedings by the municipality of East Orange. The father of the young man brought to me a letter of introduction from a valued client requesting me to defend the young man, and strongly urging me to do so, upon the plea that the young man's mother had heart disease and that her physician was greatly alarmed as to what would be the effect of a conviction upon her health. I spent a very long, hot day in the matter before a local tribunal, the prosecution being in the hands of the late Philemon Woodruff, Town Counsel of East Orange. The jury retired quite late, and after a short consideration, announced their verdict in favor of the young man. The parents were geatly pleased, and I was satisfied and given a liberal fee. Several months afterwards, a gentleman came into my office and recalled the fact that he had been one of the jurors in this case. I didn't recognize him, and made some remark about my having been quite successful in a difficult case, to

which he replied, "That's all right, but you didn't have as much to do with it as you thought you did." I asked him to explain, and he went on to say that the foreman of that jury was a great friend of the father of the young man, and when the jury retired to a sweat box of a room, not much more than six feet square, tired out and almost exhausted with the heat, the foreman immediately said, "Gentlemen, all in favor of acquitting this young man, stand up!" As there was no place to sit down or rest, the defendant was at once acquitted!

A Few Interesting Civil Cases

I will not undertake to refer at any length to the civil cases in which I have been concerned. They were, of course, of a widely varied character, but were tried simply in the day's work, and few of them offer any matters sufficiently interesting to be referred to here. However, I shall refer to the case of *Cooper v. Hawley, 60 N.J. Law 560.* Miss Cooper, the plaintiff (my client), was an elderly unmarried lady of some means. She had lived in New York, and determined to build a residence in the Roseville section of Newark. She made a contract for the erection of the house with a man named Hawley. Then she had nothing to do except to watch the construction of the house, and believing that the contractor was cheating her with the connivance of her architect, she discharged them both, and a suit was brought against her by the contractor for damages. She was personally acquainted with the distinguished lawyer Joseph H. Choate, and on consulting him, he recommended New Jersey counsel. She then consulted Mr. A. Q. Keasby, who was clever enough to hand her over to one of his sons. Disliking the way they acted, and after consulting with Mr. Cortlandt Parker, she then, upon the further advice of Mr. Choate, interviewed my father, who in turn passed over to me the conduct of the defense. We had a hot fight before Judge Child and a jury, resulting in a verdict in favor of the contractor. The contractor was repre-

sented by William B. Guild, then in the height of his successful career as a trial lawyer. I took an appeal to the Court of Errors, and before the case was reached (she insisted upon attending the argument), I identified for her the several Judges who were sitting at that term, and incidentally remarked that Justice Ludlow was distantly related to me. He was a very handsome man. I had made my argument as well as I could, and Mr. Guild was replying. He first read mechanically a short printed brief that his partner Mr. Lum had doubtless prepared, and then, throwing down the document, in a laconic and perfectly characteristic way he remarked concerning my client Miss Cooper: "This lady discharged her architect, her builder, Mr. Joseph H. Choate, Mr. A. Q. Keasbey, Mr. George M. Keasbey, Mr. Cortlandt Parker and Mr. Thomas N. McCarter; and if it had not been for his extreme good nature, I am sure she would likewise have discharged his son, my present adversary!" About this time, Miss Cooper, displeased with this personal characterization, walked up hurriedly from the rear of the room to insist that I interrupt Mr. Guild. She made considerable noise as she came up, and Mr. Guild, turning and seeing her, simply pointed to her and sat down. The Court laughed out loud, and I, of course, lost the case.

There was an amusing sequence. When the opinion came down, my client wrote me a very saucy letter complaining particularly of two things about my conduct of her case—first, that I had permitted it to be tried before Judge Child, who years before, she had learned, had been entertained by Mr. Guild at his residence in Newark, when Judge Child assumed the office of Circuit Judge in Essex County; and secondly, because, as

she expressed it, "You did not even get your second cousin in the Court above to vote for you!"

Mr. Guild's management of that case throughout was most skillful, and the apex was reached when, at the proper moment, he interrupted his argument in the middle of a sentence and sat down.

Speaking of "my cousin" Justice Ludlow, I remember a well authenticated story to the effect that he was holding the winter term of Court at Cape May, and as the evenings were long, the hotel proprietor rather had him on his mind. The proprietor's counsel was Herbert A. Drake—who although ninety years of age is still practicing at Camden—and Mr. Drake was quite pleased at the receipt of a somewhat peremptory telegram requesting that he come that afternoon to Cape May. Thinking an important piece of business was at hand, he cheerfully took the two hours' journey on the train, and was met at the station by his client, who said, somewhat apologetically, "The reason I sent for you was, I thought it would be nice if you would play a game of pinochle with Judge Ludlow, and thus shorten the evening!"

The Compton Breach of Promise Case

My reference to Mr. Guild, of whom I, like every other lawyer who knew him, was very fond, reminds me of a breach of promise case against Charles W. Compton, which was brought by a very pretty and attractive young school teacher, who had been engaged to marry Mr. Compton and was jilted by him at the urgency of two maiden sisters to whom he, after breaking the engagement, had deeded his real estate in Newark. Chandler W. Riker represented the plaintiff.

She made an excellent impression, and during the course of the trial, Riker, impressed with the merits of his case, prevailed upon Judge Swayze, who was trying it, to raise the *ad damnum* clause in the complaint to $60,000. Mr. Guild and I represented Compton, who had been through a similar suit for breach of promise at an earlier stage of his career. I never saw a more clever cross-examination of a party than Mr. Guild conducted in that case. It became my duty to sum up for the defendant, and Mr. Guild and I felt—as I think most of the interested audience did—that the plaintiff would recover the full amount claimed. I adopted in my summation the policy of claiming that the attractive young woman, instead of suffering a loss, had really gained by the breaking of the engagement. She was young and would doubtless marry well; her *fiancé* was old, unattractive, and I think I called him a "has been." After I finished and the jury were charged, Mr. Guild took me by the hand cordially, and I observed that our client was coming, as I supposed, also to express his gratification. Instead of this, however, he said very coldly, "That was a very queer speech you made!" The jury stayed out all night, and I happened to be in the court room the next morning when, about ten-thirty, they appeared and announced a verdict for the plaintiff for $9,000, which, of course, was a great victory for the defense. I was so surprised that I took the trouble to make some inquiry of the jurors, and learned that, immediately upon their retirement, one of their number sat down stubbornly and announced that he wouldn't vote for a cent for this plaintiff; that he had had a row with his wife the night before, and—"to Hell with women!" The result was, after

a whole night of discussion, a compromise at $9,000. Such is trial by jury.

The Atlantic City Surgeon's Case

I will close with a very brief mention of another interesting case in which success attended my efforts. A prominent surgeon, who had a private sanitarium at Atlantic City, had operated upon a young lady who had some abdominal trouble. Several months after this operation, a pain had developed, and it transpired upon investigation that there was a pair of surgeon's forceps in her abdomen, which she claimed this surgeon had left there at the time of his operation, and she sued him for large damages. She was from Burlington County, the daughter of a minister, and was represented by Jonathan H. Kelsey, Prosecutor of Burlington County, and by John W. Wescott, a trial lawyer of skill and experience, and formerly Attorney General of New Jersey. We had a great fight at May's Landing. The plaintiff, in testifying, apparently assumed that the jury would be pleased at a sanctimonious air, and so she rather accented the fact that prior to her trouble she had been accustomed to go to prayer meetings and to several religious services, which had been entirely interrupted by the illness that followed the operation. She produced at the trial the forceps that had undoubtedly been found in her body after the operation. She observed, however, that the defense undertook to cast the responsibility for the leaving of the forceps upon another surgeon in a previous operation at Cooper Hospital in Camden. To counteract this, and to show that these forceps could not have lain in her abdomen in the interim between the two operations,

she undertook to show how agile she had been, describing a scene in a store on Atlantic Avenue in Atlantic City, where, in response to a dare, she had, with a long skirt on, kicked and successfully touched with her foot the chandelier hanging from the ceiling. I remarked to the jury that the prayer meeting idea was a little inconsistent with the can-can practice! The jury late at night gave my client a verdict. I was rung up and told of the result about three o'clock in the morning, and I never felt more gratification over a verdict.

L'Envoie

I MIGHT go on indefinitely, but there must be an end. This review has been to me a most pleasant experience, calling to mind as it has, not only the events here described, but many others in a busy professional life, albeit these recollections must sadden one a little upon realizing that so many of the participants—judicial and professional—have passed on.

It has been a delight to me to have lived and practiced in a State small enough to enable almost anyone to enjoy an individuality, and to be known by all the judges and almost all the lawyers.

In a practice of fifty-five years, I have tried jury cases in every County but one in the State, and therefore have had opportunity to become acquainted with court officials, jurymen and laymen from Cape May to Sussex County. They have impressed me, on the whole, as very much alike—all proud of New Jersey and its history. It is a great blessing to have had an active participation in the life of this great State, and to have had by family tradition and by personal experience an intimate acquaintance of three-quarters of a century with its Bench and Bar. I close this review with a feeling, both firm and enthusiastic, of pride and affection for both!

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